Iowa Department of Natural Resources
Environmental Protection Commission

ITEM **9** **DECISION**

TOPIC **Final Rule – Ch. 103.3, 104.26, 112.31, 114.31, 115.31, 118.16, 120.13, 121.8, 122.28, 122.29 and 123.12 & to amend rules 105.14, 106.18 – Financial Assurance Requirements**

The Commission is requested to approve the attached Final Rule to adopt new rules 103.3, 104.26, 112.31, 114.31, 115.31, 118.16, 120.13, 121.8, 122.28, 122.29 and 123.12 and to amend rules 105.14 and 106.18. These new and amended rules are intended to fully implement the financial assurance requirements for all sanitary landfills as required by Iowa Code sections 455B.304(8) and 455B.306(8).

In 1986, the Code of Iowa was amended to require financial assurance requirements for all sanitary disposal projects. Financial assurance requirements for municipal solid waste landfills were adopted by the commission in 1994 (Chapter 111). Since 2002, financial assurance requirements have been adopted for composting facilities (Chapter 105) and transfer stations (Chapter 106). This rulemaking is intended to implement the statutorily required financial assurance requirements for the remaining categories of sanitary disposal projects. The proposed rules are based upon the existing rules for municipal solid waste landfills, composting facilities, and transfer stations.

The proposed rules apply to coal combustion residue landfills, solid waste processing facilities, solid waste composting facilities, solid waste transfer stations, biosolids monofill sanitary landfills, construction and demolition waste landfills, appliance demanufacturing facilities, persons engaged in the permitted land application of solid wastes and petroleum contaminated soils, cathode ray tube collection facilities, and household hazardous waste regional collection centers. Exceptions to the new financial assurance requirements are proposed for facilities to which the current financial assurance requirements are applicable. Financial assurance mechanisms should already be in place for such facilities.

A public hearing was held on March 28, 2007 and written comments were accepted from January 3, 2007 through March 28, 2007. Sixteen written comments and one oral comment were received during the public comment period. A summary of the comments received and the department's response to them is attached. The following changes were made in response to the comments received:

- Closure and postclosure account requirements were removed for owners and operators of industrial waste monofill sanitary landfills. A financial assurance mechanism is still required
- Additional financial assurance mechanisms were added to each rule chapter to allow greater flexibility for permit holders in meeting the financial assurance requirements
- Along with adding additional financial assurance mechanisms, each rule chapter was revised to make them more consistent with one another

- Clarification was provided with respect to the closure cost estimate requirements related to storage of solid waste in transportation vehicles and waste receptacles
- Revisions were made to chapters 567-103, 112, 114 and 115 to clarify that for existing facilities, the initial deposit into a trust fund or local government dedicated fund financial assurance mechanism shall be made within 30 days of close of the first fiscal year that begins after the effective date of this rule

The Commission is requested to approve the attached Final Rule.

Alex Moon, Supervisor
Energy & Waste Management Bureau
Environmental Services Division

July 17, 2007

RESPONSIVENESS SUMMARY

This is a summary of the comments received in response to proposed revisions to the Environmental Protection Commission's (EPC's) action to adopt new rules 103.3, 104.26, 112.31, 114.31, 115.31, 118.16, 120.13, 121.8, 122.28, 122.29 and 123.12 and to amend rules 105.14 and 106.18. All actions of this rule making relate to the implementation of financial assurance requirements for sanitary disposal projects. The proposed changes were published in the Iowa Administrative Bulletin on January 3, 2007 as ARC 5633B.

A public hearing was held in Des Moines on March 28, 2007. Written comments were received through the end of the day on March 28, 2007.

The responsiveness summary attempts to address all of the comments received. The Department did not list every comment received verbatim, but summarized the comments instead. The Department's response is written below each comment in bold print and indicates whether or not a change has been made to the final rule based on the comment(s) provided. The Department attempted to address every technical and miscellaneous question or comment received. The Department apologizes if some individuals or their comments were missed in this responsiveness summary. However, it is felt that the content of all the comments has been included in this summary.

Overall, there were 17 public comments pertaining to this rule making. Based on the public comments, the Department made changed that either offered additional flexibility or provided greater clarification to the proposed rules. Examples of added flexibility include the option of a multitude of financial assurance mechanisms instead of specifying one mechanism or a cash account as the financial assurance mechanism as was done previously for transfer station and compost facilities. Clarification was provided in chapters 567-103, 112, 114 and 115 to indicate that for existing facilities, the initial deposit into a trust fund or local government dedicated fund shall take place within 30 days of the close of the first fiscal year that begins after the effective date of these rules. Additionally, a revision was made to chapters 567-103 and 115 to not require owners of monofill landfills to establish closure and postclosure accounts.

Those who are interested in viewing the comments submitted by the individuals and organizations above may visit the department's Record Center on the 5th floor of the Wallace Building, 502 East 9th Street, Des Moines, IA 50319. Copies of the comments may also be requested by contacting the Record Center at 515/242-5818.

Comment 1

The commenter suggested deleting "including solid waste storage in solid waste transport vehicles" in paragraph 106.18(2)"b." The commenter noted that this was an existing provision found to be vague. The number of transportation vehicles is generally not specified in the Solid Waste permit and could in fact vary from time to time. It is a little easier to determine the number of vehicles that transport waste from the facility, but the number that transport waste to the facility is often indeterminate. There are also roll off containers that are not technically vehicles that may be stored at the facility. If the requirement is retained, the commenter requested clarification concerning the vehicles that must be addressed.

Morris Preston, Preston Engineering

Response

The intent of requiring sanitary disposal projects, such as solid waste transfer stations, to maintain financial assurance is to ensure that funding is available to properly dispose of all waste that may remain at a site due to the owner's failure to properly close the site. Paragraph 106.12(1)"c" allows for the storage of solid waste at a transfer station inside a secure solid waste transport vehicle. If solid waste is stored on site within transport vehicles it must be accounted for in the engineer's closure cost estimate.

The rule has been changed to clarify that the cost estimate must account for the maximum number of solid waste transport vehicles and waste receptacles (i.e., roll off containers) that could be on site at any one time.

Comment 2

The commenter noted that they are not aware of how the $20,000 surety bond figure was arrived at for appliance demanufacturing financial assurance. The commenter requested information that demonstrates the need for and adequacy of that particular figure and noted that it seemed intuitive that appliance demanufacturing facilities might vary significantly in size and storage capacity, and therefore some would need more financial assurance than others. The commenter noted that the recycling business is a startup avenue for small and minority businesses and that these businesses may not initially have access to financial assurance in the form of a $20,000 surety bond. Therefore this provision could have the unintended consequence of discriminating against small and minority owned businesses. The commenter recommended that the financial assurance requirement be based on the size of the operation and the amount of stored appliances, refrigerant, PCBs, mercury or other hazardous material authorized to be stored on site.

Morris Preston, Preston Engineering

Response

The following rationale was provided in the financial impact statement attached to the Notice of Intended Action:

"Maintaining a surety bond in the amount of $20,000 will act as financial assurance for appliance demanufacturing facilities. $20,000 was determined considering that no facility shall store more than 1,000 appliances on site at any one time. If a site were abandoned containing 1,000 appliances, the average cost for disposal would be $20 per appliance. It is the Department's experience from waste tire hauler surety bond financial assurance requirements that the annual cost for maintaining a $10,000 surety bond is $100 per year or 1% of the bond amount. Therefore, it is anticipated that the annual cost to appliance demanufacturers to maintain a $20,000 surety bond as financial assurance will cost each facility approximately $200 per year."

While $20,000 seems to be an appropriate dollar amount for disposing of 1,000 appliances, the maximum number of appliances that can be stored on site at any one time, the department agrees that appliance demanufacturing facilities will vary in size and some may not even have the capability to store 1,000 appliances. Also, while no formal comments were submitted on the issue, several appliance demanufacturers informed department staff that while the annual bond amount of approximately $200 is not of much concern, the ability to obtain a surety bond is.

The department agrees with the commenter that the dollar amount should be based on the specifics of the demanufacturing facility instead of establishing a set dollar amount. The department also acknowledges that additional financial assurance mechanisms should be made available. Rule 118.16 has been revised to allow a third party cost estimate based on actual facility storage capacities and to include multiple financial assurance mechanisms to choose from. To maintain consistency, all solid waste permitting chapters affected by this rulemaking have been revised to include multiple financial assurance mechanisms to choose from.

Comment 3

The commenter strongly opposes the need to purchase a bond to ensure the proper disposal of byproducts as required in rule 121.8.

The commenter indicated that the process is already adequately regulated through the initial permitting process and ongoing report requirements. The commenter stated that they initiate annual inspections by a certified agronomist and reports are sent to DNR offices and that periodic inspections by regional and state DNR personnel ensure correct application and storage.

The commented stated that the need to purchase a bond will slow the permitting process and add extra cost. If the permit is reviewed correctly, as is currently done by department staff, the need for bond money to assure the permit holder does a good job is not necessary. Concerned neighbors call if there are problems with any of the land application process or storage procedures.

The commenter pointed out that they carry a two million dollar general liability insurance policy ($1M per occurrence) to cover incidents. Additionally the commenter develops an Emergency Response and Remedial Action Plan (ERRAP) that outlines a proactive action plan for emergencies.

The commenter noted that the logical consequence of an infraction of permit rules should be the need to purchase the bond. This would be an incentive for a company to comply with rules and not penalizing a company acting responsibly. Encouraging industry to recycle and reuse byproducts is the motivation behind land application. Putting more cost and "red tape" into the process will only discourage.

Cindy Douglas on behalf of Ray DeLong, Environmental Land Management, Inc.

Response

Iowa Code sections 455B.304(8) and 455B.306(9) require a person operating or proposing to operate a sanitary disposal project to provide a financial assurance instrument to the department prior to the initial approval of a permit or prior to the renewal of a permit for an existing or expanding facility beginning July 1, 1988. The intent of requiring sanitary disposal projects, such as owners of land application projects, to maintain financial assurance is to ensure that funding is available to properly dispose of all waste that may remain at a site due to the owner's failure to properly incorporate the material.

The only waste that would remain at an application site would be waste that has been stockpiled and therefore, financial assurance is only required when the permit holder has authorization through their permit to temporarily stockpile solid wastes before land application.

The department does not agree that the need to purchase a surety bond will slow down the permit application process however, in response to this comment, additional financial assurance mechanisms have been added to rule 121.8. The department acknowledges that there is a cost associated with obtaining financial assurance but it is intended to ensure that the costs for proper disposal are the responsibility of the permit holder and not the burden of the general public or local governing bodies (i.e., cities and counties).

Comment 4

The commenter indicated that proposed rule IAC 567-115.31(455B) would impose financial assurance requirements on a much more accelerated basis than under which the commenter is already accounting for (i.e., the entire proposed financial assurance funding would need to be in place well before closure of the landfill is even contemplated since Wellman does not pass the corporate financial test). The commenter believes that the proposed financial assurance requirements are redundant and only serve to tie up cash availability in the near term that could be better used in growing the business.

(Dave Leitten, President, Fansteel Wellman Dynamics)

Response

The department assumes this comment relates to the closure and postclosure account requirements found in subrule 115.31(8). Funding of the accounts is not necessary well before closure is even contemplated as suggested. Using the mathematical formula in paragraph 115.31(8)"h", deposits to the closure and postclosure accounts are made on an annual basis

and calculated based on the remaining life expectancy of the landfill. The intent is that all of the funds necessary for closure and postclosure are set aside by the time the landfill closes with the last deposit occurring in the final year of operation.

For the reasons described in comments #15 and #17 below, subrule 115.31(8), which specifies that closure and postclosure accounts must be established and maintained, has been removed from rule 115.31. Therefore, while Wellman will still be required to obtain and maintain one of the financial assurance instruments in accordance with subrule 115.31(6), it will not be necessary for Wellman to set aside actual funds in closure and postclosure accounts. The commenter has six financial assurance mechanisms to choose from.

Comment 5

The commenter is opposed to the proposed IMF landfill rules (rule 567-115.31) and believes they should be removed from further consideration since they do not account for site-specific information (e.g., does not consider those landfills with actual expected closure dates beyond 10 years into the future and the economic impact of these proposed additional and accelerated financial assurance mechanisms).

The commenter also suggested that rule 567-115.31 be tabled until the department has conducted a thorough economic impact analysis of this proposed rule to industry and surrounding communities to assist in the identification of palatable alternative financial assurance mechanisms for certain IMF landfill owners (i.e., those entities that do not pass the corporate financial test as a financial assurance mechanism). The commenter believed that this analysis did not appear to have been performed and it is not prudent with this rulemaking until this impact is known.

The commenter also requested that the proposed rule should take into account site-specific considerations (e.g., the projected life of the existing IMF landfills) to allow a more reasonable phase-in of financial assurance requirements closer to the actual closure date of the landfill to minimize financial impacts. A variance mechanism to allow the IDNR to consider site-specific conditions to delay initiation of one of the promulgated financial assurance mechanisms (e.g., to consider an extended expected life span of a landfill and/or alternate financial assurance mechanisms) should be added to these rules.

(Dave Leitten, President, Fansteel Wellman Dynamics)

Response

The closure and postclosure cost estimates do in fact take into account site-specific considerations because they are determined solely on site-specific factors as determined by a third party professional engineer [see subrules 115.31(3) and 115.31(4)]. Also, the account requirements found in subrule 115.31(8) can be considered a phase-in approach because deposits are made on an annual basis based on the remaining life expectancy of the landfill. However, it should be noted that the closure and postclosure account requirements have been removed from consideration in the final adopted rule.

The permit holder is also assuming that the only financial assurance mechanism available to them is the trust fund mechanism which allows a 10 year pay-in period. The commenter notes

that they do not pass the corporate financial test and suggests that the rule making be tabled until other more palatable alternative financial assurance mechanisms can be identified. Subrule 115.31(6) allows permit holders to select from nine different financial assurance mechanisms. Three of these mechanisms are for local government entities only, but six other mechanisms are available for private agencies. Several of these mechanisms are listed in the Iowa Code section which is being implemented through this rule making and others have been provided based on their past use by municipal solid waste landfills throughout the country under federal requirements found in the Code of Federal Regulations 40 Part 258.

The department disagrees that a variance mechanism should be allowed to delay initiation of the financial assurance requirements. Iowa Code sections 455B.304(8) and 455B.306(9) require a person operating or proposing to operate a sanitary landfill to provide a financial assurance instrument to the department prior to the initial approval of a permit or prior to the renewal of a permit for an existing or expanding facility beginning July 1, 1988. This requirement was put in place almost twenty years ago and needs to be implemented for all sanitary disposal projects permitted by the department.

Comment 6

The commenter indicated that the proposed accelerated financial assurance requirements will divert funds from Wellman's growth potential that could seriously affect their continued growth in the competitive sand-casting market. This could also seriously impact the local Creston area and outlying areas given Wellman's economic importance to the area.

(Dave Leitten, President, Fansteel Wellman Dynamics)

Response

The intent of the financial assurance requirements is to ensure that monetary funds are available to properly close and maintain the landfill during the postclosure period if the owner fails to do both actions on their own. If the owner fails to properly close the site or abandons the site during the postclosure period, the department is able to call upon the financial assurance mechanism to obtain funding to close the site and continue postclosure monitoring requirements for the owner. Without this funding mechanism, the burden of closure and postclosure could potentially shift to the surrounding communities which could also seriously impact them.

Comment 7

Given that the actual closure of the landfill owned by Wellman is not contemplated for at least 20 years, the commenter believes that current estimates of closure/postclosure costs are much higher than will actually be spent when the landfill is closed due to future improvements in closure technologies. Improved landfill closure technologies in 20 or 30 years should cost much less than current technologies.

(Dave Leitten, President, Fansteel Wellman Dynamics)

Response

The department does not disagree with the commenter that improved technologies may cost less than current technologies. However, because updated closure and postclosure cost estimates are required annually throughout the operating life of the landfill and during the postclosure period, the estimates can be adjusted yearly to reflect inflation or future improvements in closure technologies which would reduce the closure and postclosure costs.

Comment 8

The commenter noted that the proposed rule does not discuss whether the department conducted a thorough financial evaluation on the impacts to industry and affected communities from the implementation of IAC 567 Chapter 115. The commenter stated that the proposed rule could have a significant economic impact that should be determined by the department and considered in identifying possible additional and alternative financial assurance mechanisms they would not impact industry so severely (i.e., especially for those IMF landfill owners that do not pass the proposed "corporate financial test" assurance mechanism).

(Dave Leitten, President, Fansteel Wellman Dynamics)

Response

A financial impact statement was included with the rule Notice of Intended Action which uses real data from existing closure and postclosure cost estimates for municipal solid waste landfills. Again, the department assumes that the commenter is referring to the requirement for funding closure and postclosure accounts over the life of the landfill. As stated previously, this requirement was removed with the final rule.

Comment 9

115.31(3)(c) – This paragraph describes the submittal of a detailed written estimate for the closure of the IMF landfill in "current dollars." This cost estimate then serves as the basis for the amount of closure financial assurance to be obtained. However, it is not clear whether the present value of future closure costs can be considered in the "current dollars" estimate. Discounting future expenses for their present value should be allowed to accurately account for their real cost. For clarification, a definition of "current dollars" describing the use of present value calculations should be added to this paragraph or to a definitions section.

(Dave Leitten, President, Fansteel Wellman Dynamics)

Response

"In current dollars" is interpreted to mean that the estimate for closure needs to be calculated using the most recent estimate (current dollars) for closure. Subparagraphs 115.31(3)"c"(3) and (4) require the closure cost estimate to be adjusted annually for inflation or for any changes that increase the maximum cost of closure care. Therefore, showing estimated inflation for closure costs for future years is not necessary. Updating the closure estimate

annually eliminates the need to calculate rates of inflation and interest that are unknown for future years.

Comment 10

115.31(4)(c) - This paragraph describes the submittal of a detailed written estimate for the postclosure of the IMF landfill in "current dollars." This cost estimate then serves as the basis for the amount of postclosure financial assurance to be obtained. However, it is not clear whether the present value of future postclosure costs can be considered in the "current dollars" estimate. Discounting future expenses for their present value should be allowed to accurately account for their real cost. For clarification, a definition of "current dollars" describing the use of present value calculations should be added to this paragraph or to a definitions section.

(Dave Leitten, President, Fansteel Wellman Dynamics)

Response

"In current dollars" and "for the entire postclosure care period" is interpreted to mean that the estimate for postclosure needs to be calculated using the most recent estimate (current dollars) for annual postclosure care multiplied by thirty (entire postclosure care period). Subparagraphs 115.31(4)"c"(3) and (4) require the postclosure cost estimate to be adjusted annually for inflation or for any changes that increase the maximum cost of postclosure care. Therefore, showing estimated inflation for postclosure costs for future years and interest earned on the postclosure fund for future years is not necessary. Updating the postclosure estimate annually eliminates the need to calculate rates of inflation and interest that are unknown for future years.

Comment 11

115.31(6)(g)(1) – This paragraph regarding the corporate guarantee financial assurance mechanism states that "The guarantor must meet the requirements for owners or operators in paragraph 115.31(6)(g)." It appears that the reference to paragraph 115.31(6)(g) is a typo and that the appropriate reference should be to 115.31(6)"e" to refer to the corporate financial test. Please review and correct accordingly.

(Dave Leitten, President, Fansteel Wellman Dynamics)

Response

The department agrees and has made this change.

Comment 12

115.31(8)(f) – This paragraph states that financial assurance accounts are to be established by April 1, 2008. However, throughout the document it is stated that the initial payment into the trust fund or initiation of a different financial assurance mechanism must be made before the initial receipt of

waste [e.g., see 115.31(6)(a)(5) for trust fund and 115.31(6)(h)(6) for local government guarantee]. Obviously this is an impossible deadline for existing landfills already receiving wastes. These citations should be modified to reflect an April 1, 2008 deadline for units already receiving waste.

(Dave Leitten, President, Fansteel Wellman Dynamics)

Response

As stated previously, subrule 115.31(8) has been removed. Modifications have been made to numbered paragraphs 115.31(6)"a"(5) and 115.31(6)"h"(6) to reflect that the initial deposit into the trust fund or local government dedicated fund shall be made before the initial receipt of waste or within 30 days of the close of the first fiscal year beginning after the effective date of the rules for existing facilities. This is consistent with the requirements previously found in subrule 115.31(8).

Comment 13

The commenter noted that their existing landfill will close and they will become a solid waste transfer station and also operate the following permitted facilities: a Regional Collection Center for household hazardous waste (HHW), a non-Freon Appliance demanufacturing service, and we store Freon appliances and E-Scrap including Cathode Ray Tube (CRT) products for pickup by a contractor for demanufacturing and recycling.

The commenter noted that they have taken on the storage, demanufacturing and recycling of appliances, CRTs and HHWs as part of their integrated solid waste management duties and that customers simply pay what it costs the agency for these services.

The commenter indicated that they plan to set aside funds for closure of the new transfer station but that financial assurance for the other activities are of concern. The commenter understood the draft rules to require surety bonds to cover potential closure costs of RCC, appliance and E-Waste operations.

The commenter indicated that they did not think that rule makers intend to discourage agencies like theirs from doing the good work that we do, but that might very well be the result of increased paperwork and fees stemming from this rule change. A more likely scenario would be that if they discontinued demanufacturing, private demanufacturers will charge at least $10 and on up per item and more items will be improperly disposed of and there will be a higher risk of pollution.

The commenter understood that there needs to be some way to cover the cost of cleanup should the unlikely scenario of a public entity such as theirs decide to simply abandon this service and property and requested another way to protect the environment against potential problems. The commenter noted that they had put a great deal of money away towards postclosure of the present landfill facility and that no one really knows how much any closure and postclosure of the landfill will cost and suggested using their already set-aside for the landfill financial assurance funds as insurance for closure of RCC's, appliances and CRTs.

Leslie Bullock Goldsmith, Director, Prairie Solid Waste Agency

Response

The commenter's suggestion of allowing municipal solid waste landfills to use the already set aside funds for landfill closure and postclosure as financial assurance for other sanitary disposal project operations occurring at the landfill (e.g. appliance demanufacturing, cathode ray tube collection, waste tire collection) supports the rules as written (see subrules 118.6(1) and 123.12(1) as examples).

The department is aware that the commenter's regional landfill is closing and that they will construct and operate a solid waste transfer station instead. Therefore, all other activities, such as appliance demanufacturing and cathode ray tube collection, will be operated in conjunction with the transfer station. The exemption for landfills is not intended to apply to transfer stations as well. Landfills are much more capable of absorbing the additional closure costs for other sanitary disposal projects but the same cannot be said for transfer stations. The average transfer station closure cost estimate is between $10,000 and $20,000. Cost estimates for landfills range between $600,000 for smaller landfills to $10,000,000 for the very largest landfills. The $10,000 - $20,000 set aside for proper disposal of solid waste that may remain at the transfer station does not include a large enough buffer to absorb the costs to dispose of other solid waste materials such as appliances and household hazardous wastes that may remain on site as well.

As the commenter notes, the cost estimates for closure and postclosure for the landfill are estimates. If the estimate for closure was over estimated, the remaining funds may be used for other purposes not related to the landfill. Therefore, any remaining funds from the landfills closure activities may be used to fulfill the financial assurance closure requirements for other sanitary disposal project activities related to the transfer station that will remain in operation.

Comment 14

The commenter expressed concern that requiring financial assurance for permitted appliance demanufacturers will not do anything to prevent the illegal appliance demanufacturing operations. The commenter also indicated that they would like an appliance hauler permit program similar to the tire haulers registration program.

Tim Hennings, Henning and Sons Salvage

Response

At this time, the Department only has the authority through Iowa Code to require financial assurance for permitted sanitary disposal projects which includes appliance demanufacturers. When illegal appliance demanufacturers are discovered, they are notified that it is illegal to demanufacture appliances without a permit and are required to cease demanufacturing or apply for a permit. If they apply for a permit then we can require financial assurance.

The department is in favor of the appliance hauler program as suggested by the commenter but notes that an appliance hauler program requires a change to Iowa Code first and then a revision to Iowa Administrative Code and therefore cannot be completed with this rule making.

Comment 15

The commenter noted that the proposed rule change would implement the financial assurance requirements for all sanitary landfills as required by Iowa Code section 455B.304(8) and 455B.306(9) and would include a provision for their landfills that requires them to maintain a separate account for closure and postclosure as required by Iowa Code section 455B.306(9)b.

The commenter indicated that they believe the original intent of this statute was to provide assurance that owners/operators of sanitary landfills would have adequate financial resources available when a landfill facility became filled to accomplish the required closure and postclosure monitoring/maintenance activities. The commenter indicated that the requirement for a decommissioning fund account is generally more applicable for a traditional sanitary landfill that accepts household wastes, but is less appropriate for large permanently based Iowa companies that operate monofill landfills for waste management of waste materials generated by their facilities. The commenter noted that privately owned landfills such as theirs are not in direct competition with other commercial landfills, and the nature of being a public utility company ensures adequate funding resources for closure/post-closure activities will be available. The commenter believes there is no reason to require establishment of a "separate account for closure and postclosure" for monofill landfills other than the current directive found in the Iowa Code.

The commenter referenced legislation that was introduced in the 2007 Iowa Legislative session to eliminate the requirement to establish this "separate closure account" for landfills where a private agency disposes of waste generate by the private agency. At the time of public comment, the proposed legislative change was still under consideration.

The commenter requested that the department:

1. Support the proposed legislative rule change to eliminate establishing a separate closure and postclosure account for landfills such as the monofill landfills owned by the commenter.

2. Withhold finalizing the proposed amendment change for IAC-567 Chapter 103 pending the outcome the 2007 Iowa Legislative session.

James A. Klosterbuer, Senior Environmental Consultant, Interstate Power and Light Company

Response

The department met both requests made by the commenter. Chapter 103 has been revised as a result of the change to Iowa Code that occurred during the 2007 legislative session. The revision to Iowa Code removes the requirement that coal combustion residue landfills are required to maintain closure and postclosure accounts. All references to closure and postclosure accounts have been removed from rule 567 – 103.3(455B).

Comment 16

The commenter indicated that they were in agreement with the concept of financial assurance for construction and demolition landfills, as proposed under subrule 114.31(2), but felt that having the rules applicable to all facilities "accepting waste as of (the effective date of this rule)" could prove to be overly burdensome to those facilities that have a relatively short permitted life remaining. It is not feasible for facilities having a permitted life of one or two years to meet the financial assurance requirements, specifically the funding of the closure and postclosure account which could approach $1 million, in this short time period.

The commenter noted that when financial assurance requirements were implemented for municipal waste landfills, landfills that stopped accepting waste prior to August 24, 1994, did not have to meet the financial assurance requirements. The commenter believes that this option, with an applicable date some time after the effective date of the revision to Chapter 114, should be provided to the owners of construction and demolition landfills as well.

The commenter suggested that the option above should also apply to the other chapters having the financial assurance requirements added.

Doug Luzbetak, P.E., Project Manager, Fox Engineering Associates, Inc.

Response

The applicable date for compliance with financial assurance requirements as specified in Iowa Code 455B.306(9) is July 1, 1988. Having an applicable date some time after the effective date as suggested would first require a revision to the referenced Iowa Code section. It would also only serves to delay compliance with legislation that has not been complied with for almost 20 years.

As proposed, the initial deposit into the closure and postclosure accounts is required within 30 days of the close of the facility's first fiscal year that begins after the effective date of this rule. This translates to a first deposit being required by July 30, 2009 for public agencies and January 30, 2009 for private agencies. Because of the extended timeframe for public comment this ultimately results in a delay as requested by the commenter.

Comment 17

The commenter agreed that a "financial assurance instrument", as defined in Iowa Code 455B.301.8, is required for sanitary disposal projects pursuant to Iowa Code section 455B.306.8. However, they strongly disagreed that the financial assurance instrument requirements for CCR monofills in rule 103.3 should be verbatim with the financial assurance instrument requirements for municipal solid waste landfills (MSWLFs) because there are significant differences between MSWLFs and CCR monofills both in environmental risk and the financial risk of facility abandonment.

The commenter indicated that MSWLFs exist to serve the general population, accepting many types of mixed waste from many different sources, and are stand-alone entities surviving from tip fee revenues. The disposal of solid waste is the primary business of a MSWLF and often there is no financial tie to the area other than the continued operation of the MSWLF. Thus, the owner of a private MSWLF could attempt to abandon the landfill, leaving the state and local governments to

deal with the potential liability. The commenter noted that a more likely scenario is that once the MSWLF is closed and no longer operating, there is not a sufficient revenue stream to maintain the MSWLF through the minimum 30-year post-closure period and that these considerations provide support for why the department would require a restricted cash account for MSWLFs.

The commenter also noted that the disposal of CCR is not the primary business of a utility; it is a side-component of generating power for the economic vitality of the citizens and businesses of Iowa. CCR monofills accept only one type of waste (coal combustion residue) that is often generated on-site by the utility that owns the monofill. The financial viability of CCR monofills does not depend on tip fees from the public; it depends on the financial viability of the utility that owns the monofill.

The commenter also noted that the closure of a CCR monofill does not end the revenue stream for the continued maintenance of that monofill through the minimum 10-year post closure period. The financial assurance instruments listed in proposed IAC paragraphs 567—103.3(6) “a” through “i” were indicated as more than sufficient to satisfy the financial responsibility for CCR monofills and the commenter requested that the restricted cash account requirement be removed.

The commenter indicated that a bill was currently moving through the legislature that would provide the department sufficient regulatory flexibility to craft a menu of financial assurance instruments more suitable for CCR monofills owned by rate regulated utilities. The bill is expected to be signed into law before July of 2007, which is well within the administrative timeline for amending and finalizing this rulemaking. The commenter requested that the department (1) wait to finalize the amendments to IAC 567—Chapter 103 until the 2007 legislative process has run its course or (2) finalize the rule now without the restricted cash account requirement. At a minimum, the commenter believed that waiting to finalize this rulemaking until the summer of 2007 was prudent because it will avoid the unnecessary administrative burden on the department of immediately starting another rulemaking later in 2007.

Jon E. Kallen, Manager Environmental Policy and Strategy, MidAmerican Energy Company and Jeff Myrom, Senior Environmental Policy Analyst, MidAmerican Energy Company

Response

The department met the request made by the commenter. Chapter 103 has been revised as a result of the change to Iowa Code that occurred during the 2007 legislative session. The revision to Iowa Code removes the requirement that coal combustion residue landfills, such as those owned and operated by MEC, are required to maintain closure and postclosure accounts. All references to closure and postclosure accounts have been removed from rule 567 – 103.3(455B).

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.304(8), the Environmental Protection Commission hereby adopts the amendments to Chapter 103, "Sanitary Landfills: Coal Combustion Residue," Chapter 104, "Sanitary Disposal Projects with Processing Facilities," Chapter 105, "Organic Materials Composting Facilities," Chapter 106, "Citizen Convenience Centers and Transfer Stations," Chapter 112, "Sanitary Landfills: Biosolids Monofills," Chapter 114, "Sanitary Landfills: Construction and Demolition Wastes," Chapter 115, "Sanitary Landfills: Industrial Monofills," Chapter 118, "Discarded Appliance Demanufacturing," Chapter 120, "Landfarming of Petroleum Contaminated Soil," Chapter 121, "Land Application of Wastes," Chapter 122, "Cathode Ray Tube Device Recycling," and Chapter 123, "Regional Collection Centers and Mobile Unit Collection and Consolidation Centers," Iowa Administrative Code. The proposed changes were published in the Iowa Administrative Bulletin on January 3, 2007 as ARC 5633B.

These new and amended rules are intended to fully implement the financial assurance requirements for all sanitary disposal projects as required by Iowa Code section 455B.304(8) and Supplement section 455B.306(9).

In 1986, the Code of Iowa was amended to require financial assurance requirements for all sanitary disposal projects. Financial assurance requirements for municipal solid waste landfills were adopted by the Commission in 1994 (567—Chapter 111). Since 2002, financial assurance requirements have been adopted for composting facilities (567—Chapter 105) and transfer stations (567—Chapter 106). This rule making is intended to implement the statutorily required financial assurance requirements for the remaining categories of sanitary disposal projects. The proposed amendments are based upon the existing rules for municipal solid waste landfills, composting facilities, and transfer stations.

The proposed amendments apply to coal combustion residue landfills, solid waste processing facilities, solid waste composting facilities, solid waste transfer stations, biosolids monofill sanitary landfills, construction and demolition waste landfills, appliance demanufacturing facilities, persons engaged in the permitted land application of solid wastes and petroleum–contaminated soils, cathode ray tube collection facilities, and household hazardous waste regional collection centers. Exceptions to the new financial assurance requirements are proposed for facilities to which the current financial assurance requirements are applicable. Financial assurance mechanisms should already be in place for such facilities.

A public hearing was held in Des Moines on March 28, 2007. Written comments were received through the end of the day on March 28, 2007. Overall, there were 17 public comments pertaining to this rule making. Based on the public comments, the Department made changed that either offered additional flexibility or provided greater clarification to the proposed rules. Examples of added flexibility include the option of a multitude of financial assurance mechanisms instead of specifying one mechanism or a cash account as the financial assurance mechanism as

was done previously for transfer station and compost facilities. Clarification was provided in chapters 567-103, 112, 114 and 115 to indicate that for existing facilities, the initial deposit into a trust fund or local government dedicated fund shall take place within 30 days of the close of the first fiscal year that begins after the effective date of these rules. Additionally, a revision was made to chapters 567-103 and 115 to not require owners of monofill landfills to establish closure and postclosure accounts.

These amendments are intended to implement Iowa Code section 455B.304 and Supplement section 455B.306.

The following amendments are adopted.

ITEM 1. Amend 567—Chapter 103 by adopting the following **new** rule:

567—103.3(455B) Coal combustion residue sanitary landfill financial assurance.

103.3(1) Purpose. The purpose of this rule is to implement Iowa Code section 455B.304(8) and Supplement section 455B.306(9) by providing the criteria for establishing financial assurance for closure, postclosure and corrective action at coal combustion residue sanitary landfills (CCR landfills).

103.3(2) Applicability. The requirements of this rule apply to all owners and operators of CCR landfills accepting waste as of [the effective date of this rule] except owners or operators that are state or federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States.

103.3(3) Financial assurance for closure. The owner or operator of a CCR landfill must establish financial assurance for closure in accordance with the criteria in this rule. The owner or operator must provide continuous coverage for closure until released from this requirement by demonstrating compliance with subrule 103.1(5). Proof of compliance pursuant to paragraphs 103.3(3)“a” through “e” must be submitted by the owner or operator yearly by April 1 and approved by the department.

a. The owner or operator shall submit the current version of department Form 542–8090, Sanitary Landfill Financial Assurance Report Form, which contains, but is not limited to, the amount of the financial assurance, the annual financial statement required by Iowa Code Supplement sections 455B.306(9)“e” and 455B.306(7)“c,” and the current balances of the closure and postclosure accounts at the time of submittal as required by Iowa Code Supplement section 455B.306(9)“b.”

b. The owner or operator shall submit a copy of the financial assurance instruments or the documents establishing the financial assurance instruments in an amount equal to or greater than the amount specified in subrule 103.3(9). Documentation for the mechanism(s) used to demonstrate financial assurance shall contain, at a minimum, the items required to be submitted as specified in paragraphs 103.3(6)“a” to “i.”

c. The owner or operator shall submit a detailed written estimate, in current dollars, certified by an Iowa–licensed professional engineer, of the cost of hiring a third party to close the CCR landfill in accordance with the closure/postclosure plan as required by subrule 103.1(5). Such estimate must be available at any time during the active life of the landfill.

(1) The cost estimate must equal the cost of closing the CCR landfill at any time during the permitted life of the facility when the extent and manner of its operation would make closure the most expensive.

(2) The costs contained in the third–party estimate for closure must be accurate and reasonable when compared to the cost estimates used by other similarly situated landfills in Iowa.

(3) During the active life of the CCR landfill, the owner or operator must annually adjust the closure cost estimate for inflation.

(4) The owner or operator must, annually or at the time of application for a permit amendment that increases closure costs, whichever occurs first, increase the closure cost estimate and the amount of financial assurance provided if changes to the closure plan or CCR landfill conditions increase the maximum cost of closure at any time during the remaining active life of the facility.

(5) The owner or operator may reduce the amount of financial assurance for closure if the most recent estimate of the maximum cost of closure at any time during the active life of the facility is less than the amount of financial assurance currently provided. Prior to the reduction, the owner or operator must submit to the department the justification for the reduction of the closure cost estimate and the updated documentation required by paragraphs 103.3(3)“a” through “e” and receive department approval for the reduction. Approval or denial shall be issued within 30 days of receipt of the reduction request.

(6) The third–party estimate submitted to the department must include the site area subject to closure and account for at least the following factors determined by the department to be minimal necessary costs for closure:

1. Closure and postclosure plan document revisions;
2. Site preparation, earthwork and final grading;
3. Drainage control culverts, piping and structures;
4. Erosion control structures, sediment ponds and terraces;
5. Final cap construction;
6. Cap vegetation soil placement;
7. Cap seeding, mulching and fertilizing;
8. Monitoring well and piezometer modifications;
9. Leachate system cleanout and extraction well modifications;
10. Monitoring well installations and abandonments;
11. Facility modifications to effect closed status;
12. Engineering and technical services;
13. Legal, financial and administrative services; and
14. Closure compliance certifications and documentation.

d. For CCR landfills owned by local governments, the owner or operator shall submit to the department a copy of the owner's or operator's most recent annual audit report in the form prescribed by the office of the auditor of the state of Iowa.

e. Privately held CCR landfills shall submit an affidavit from the owner or operator indicating that a yearly review has been performed by a certified public accountant to determine whether the privately owned landfill is in compliance with this rule. The affidavit shall state the name of the certified public accountant, the dates and conclusions of the review, and the steps taken to rectify any deficiencies identified by the accountant.

103.3(4) Financial assurance for postclosure. The owner or operator of a CCR landfill must establish financial assurance for the costs of postclosure in accordance with the criteria in this rule. The owner or operator must provide continuous coverage for postclosure until released from this requirement by demonstrating compliance with the closure/postclosure plan and the closure permit. Proof of compliance pursuant to paragraphs 103.3(4)"a" through "e" must be submitted by the owner or operator yearly by April 1 and approved by the department.

a. The owner or operator shall submit the current version of department Form 542–8090, Sanitary Landfill Financial Assurance Report Form, which contains, but is not limited to, the amount of the financial assurance, the annual financial statement required by Iowa Code Supplement sections 455B.306(9)"e" and 455B.306(7)"c," and the current balances of the closure and postclosure accounts required by Iowa Code Supplement section 455B.306(9)"b."

b. The owner or operator shall submit a copy of the documents establishing a financial assurance instrument in an amount equal to or greater than the amount specified in subrule 103.3(9). Documentation for the mechanism(s) used to demonstrate financial assurance shall contain, at a minimum, the items required to be submitted as specified in paragraphs 103.3(6)"a" to "i."

c. The owner or operator shall submit a detailed written estimate, in current dollars, certified by an Iowa–licensed professional engineer, of the cost of hiring a third party to conduct postclosure for the CCR landfill in compliance with the closure/postclosure plan developed pursuant to subrule 103.1(5). The cost estimate must account for the total cost of conducting postclosure, as described in the plan, for the entire postclosure period.

(1) The cost estimate for postclosure must be based on the most expensive costs of postclosure during the entire postclosure period.

(2) The costs contained in the third–party estimate for postclosure must be accurate and reasonable when compared to the cost estimates used by other similarly situated landfills in Iowa.

(3) During the active life of the CCR landfill and during the postclosure period, the owner or operator must annually adjust the postclosure cost estimate for inflation.

(4) The owner or operator must, annually or at the time of application for a permit amendment that increases postclosure costs, whichever occurs first, increase the estimate and the amount of financial assurance provided if changes in the postclosure plan or CCR landfill conditions increase the maximum cost of postclosure.

(5) The owner or operator may reduce the amount of financial assurance for postclosure if the most recent estimate of the maximum cost of postclosure beginning at any time during the active life of the facility is less than the amount of financial assurance currently provided. Prior to the reduction, the owner or operator must submit to the department the justification for the reduction of the postclosure cost estimate and the updated documentation required by paragraphs 103.3(4)“a” through “e” and must receive department approval for the reduction. Approval or denial shall be issued within 30 days of receipt of the reduction request.

(6) The third–party estimate submitted to the department must include the site area subject to postclosure and account for at least the following factors determined by the department to be minimal necessary costs for postclosure:

1. General site facilities, access roads and fencing maintenance;
2. Cap and vegetative cover maintenance;
3. Drainage and erosion control systems maintenance;
4. Groundwater to waste separation systems maintenance;
5. Groundwater and surface water monitoring systems maintenance;
6. Groundwater and surface water quality monitoring and reports;
7. Groundwater monitoring systems performance evaluations and reports;
8. Leachate control systems maintenance;
9. Leachate management, transportation and disposal;
10. Leachate control systems performance evaluations and reports;
11. Facility inspections and reports;
12. Engineering and technical services;
13. Legal, financial and administrative services; and
14. Financial assurance, accounting, audits and reports.

d. For CCR landfills owned by local governments, the owner or operator shall submit to the department a copy of the owner’s or operator’s most recent annual audit report in the form prescribed by the office of the auditor of the state of Iowa.

e. Privately held CCR landfills shall submit an affidavit from the owner or operator indicating that a yearly review has been performed by a certified public accountant to determine whether the privately owned landfill is in compliance with this rule. The affidavit shall state the name of the certified public accountant, the dates and conclusions of the review, and the steps taken to rectify any deficiencies identified by the accountant.

103.3(5) Financial assurance for corrective action.

a. An owner or operator required to undertake corrective action must have a detailed written estimate, in current dollars, prepared by an Iowa–licensed professional engineer, of the cost of hiring a third party to perform the required corrective action. The estimate must account for the total costs of the activities described in the approved corrective

action plan for the entire corrective action period. The owner or operator must submit to the department the estimate and financial assurance documentation within 30 days of department approval of the corrective action plan.

(1) The owner or operator must annually adjust the estimate for inflation until the corrective action plan is completed.

(2) The owner or operator must increase the cost estimate and the amount of financial assurance provided if changes in the corrective action plan or CCR landfill conditions increase the maximum cost of corrective action.

(3) The owner or operator may reduce the amount of the cost estimate and the amount of financial assurance provided if the estimate exceeds the maximum remaining costs of the remaining corrective action. The owner or operator must submit to the department the justification for the reduction of the cost estimate and documentation of financial assurance.

b. The owner or operator of a CCR landfill required to undertake a corrective action plan must establish financial assurance for the most recent corrective action plan by one of the mechanisms prescribed in subrule 103.3(6). The owner or operator must provide continuous coverage for corrective action until released from financial assurance requirements by demonstrating compliance with the following:

(1) Upon completion of the remedy, the owner or operator must submit to the department a certification of compliance with the approved corrective action plan. The certification must be signed by the owner or operator and by an Iowa–licensed professional engineer.

(2) Upon department approval of completion of the corrective action remedy, the owner or operator shall be released from the requirements for financial assurance for corrective action.

103.3(6) Allowable financial assurance mechanisms. The mechanisms used to demonstrate financial assurance as required by Iowa Code Supplement section 455B.306(9)"a" must ensure that the funds necessary to meet the costs of closure, postclosure, and corrective action for known releases will be available whenever the funds are needed. Owners or operators must choose from options in paragraphs 103.3(6)"a" to "i."

a. Trust fund.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action, whichever is applicable, by establishing a trust fund which conforms to the requirements of this subrule. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. A copy of the trust agreement must be submitted pursuant to subrules 103.3(3), 103.3(4), and 103.3(5) and placed in the facility's official files.

(2) Payments into the trust fund must be made annually by the owner or operator over ten years or over the remaining life of the CCR landfill, whichever is shorter, in the case of a trust fund for closure or postclosure; or over one–half of the estimated length of the corrective action plan in the case of response to a known release. This period is referred to as the pay–in period.

(3) For a trust fund used to demonstrate financial assurance for closure and postclosure, the first payment into the fund must be at least equal to the amount specified in subrule 103.3(9) for closure or postclosure divided by the number of years in the pay–in period as defined in subparagraph 103.3(6)"a"(2). The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{CE - CB}{Y}$$

where CE is the amount specified in 103.3(9) for closure or postclosure (updated for inflation or other changes), CB is the current balance of the trust fund, and Y is the number of years remaining in the pay–in period.

(4) For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund must be at least equal to one–half of the current cost estimate for corrective action divided by the number of years in the corrective action pay–in period as defined in subparagraph 103.3(6)"a"(2). The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{RB - CV}{Y}$$

where RB is the most recent estimate of the required trust fund balance for corrective action, which is the total cost that will be incurred during the second half of the corrective action period, CV is the current value of the trust fund, and Y is the number of years remaining in the pay–in period.

(5) The initial payment into the trust fund must be made before the initial receipt of waste or within 30 days of close of the first fiscal year that begins after [the effective date of this rule] in the case of existing facilities, or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or no later than 120 days after the corrective action remedy has been approved by the department.

(6) The owner or operator, or other person authorized to conduct closure, postclosure, or corrective action activities, may request reimbursement from the trustee for these expenditures, including partial closure, as the expenditures are incurred. Requests for reimbursement will be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure, postclosure, or corrective action and if justification and documentation of the costs are placed in the operating record. The owner or operator must submit to the department documentation of the justification for reimbursement and verification that reimbursement has been received.

(7) The trust fund may be terminated by the owner or operator only if the owner or operator substitutes alternative financial assurance as specified in this rule or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

(8) After the pay–in period has been completed, the trust fund shall be adjusted annually to correct any deficiency of the fund with respect to the adjusted cost estimate and may be adjusted annually should the balance in the fund exceed the adjusted cost estimate.

b. Surety bond guaranteeing payment or performance.

(1) An owner or operator may demonstrate financial assurance for closure or postclosure by obtaining a payment or performance surety bond which conforms to the requirements of this subrule. An owner or operator may demonstrate financial assurance for corrective action by obtaining a performance bond which conforms to the requirements of this subrule. The bond must be effective before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or no later than 120 days after the corrective action remedy has been approved by the department. The owner or operator must submit a copy of the bond to the department and keep a copy in the facility's official files. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury. The state shall not be considered a party to the surety bond.

(2) The penal sum of the bond must be in an amount at least equal to the amount specified in subrule 103.3(9) for closure and postclosure or corrective action, whichever is applicable.

(3) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond and also upon notice from the department pursuant to subparagraph 103.3(6)"b"(6).

(4) The owner or operator must establish a standby trust fund. The standby trust fund must meet the requirements of paragraph 103.3(6)"a" except the requirements for initial payment and subsequent annual payments specified in subparagraphs 103.3(6)"a"(2) through (5).

(5) Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund. Payments from the trust fund must be approved by the trustee and the department.

(6) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice from the surety of withdrawal of the cancellation, or proof of a deposit into the standby trust fund of a sum equal to the amount of the bond. If the owner or operator has not complied with this subparagraph within the 60–day time period, this shall constitute a failure to perform and the department shall notify the surety, prior to the expiration of the 120–day notice period, that such a failure has occurred.

(7) The bond must be conditioned upon faithful performance by the owner or operator of all closure, postclosure, or corrective action requirements of the Code of Iowa and this rule. A failure to comply with subparagraph 103.3(6)"b"(6) shall also constitute a failure to perform under the terms of the bond.

(8) Liability under the bond shall be for the duration of the operation, closure, and postclosure period.

(9) The owner or operator may cancel the bond only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

c. Letter of credit.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action, whichever is applicable, by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph. The letter of credit must be effective before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or no later than 120 days after the corrective action plan is approved by the department. The owner or operator must submit to the department a copy of the letter of credit and place a copy in the facility's official files. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter–of–credit operations are regulated and examined by a federal or state agency.

(2) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the name and address of the facility, and the amount of funds assured, must be included with the letter of credit submitted to the department and placed in the facility's files.

(3) The letter of credit must be irrevocable and issued for a period of at least one year in an amount at least equal to the amount specified in subrule 103.3(9) for closure, postclosure or corrective action, whichever is applicable. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the letter of credit into a standby trust fund established pursuant to paragraph 103.3(6)"a." If the owner or operator has not complied with this subrule within the 60-day time period, the issuer of the letter of credit shall deposit a sum equal to the amount of the letter of credit into the standby trust fund established by the owner or operator. The provision of funds by the issuer of the letter of credit shall be considered an issuance of a loan to the owner or operator, and the terms of that loan shall be governed by the letter of credit or subsequent agreement between those parties. The state shall not be considered a party to this credit transaction.

(4) The owner or operator may cancel the letter of credit only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

d. Insurance.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action by obtaining insurance which conforms to the requirements of this paragraph. The insurance must be effective before the initial receipt of waste or prior to cancellation of an alternative financial assurance, in the case of closure and postclosure; or no later than 120 days after the corrective action plan has been approved by the department. At a minimum, the insurer must be licensed to transact the business of insurance, or be eligible to provide insurance as an

excess or surplus lines insurer, in one or more states. The owner or operator must submit to the department a copy of the insurance policy and retain a copy in the facility's official files.

(2) The closure or postclosure insurance policy must guarantee that funds will be available to close the CCR landfill whenever final closure occurs or to provide postclosure for the CCR landfill whenever the postclosure period begins, whichever is applicable. The policy must also guarantee that once closure or postclosure begins, the insurer will be responsible for the paying out of funds to the owner or operator or other person authorized to conduct closure or postclosure, up to an amount equal to the face amount of the policy.

(3) The insurance policy must be issued for a face amount at least equal to the amount specified in subrule 103.3(9) for closure, postclosure, or corrective action, whichever is applicable. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(4) An owner or operator, or any other person authorized to conduct closure or postclosure, may receive reimbursements for closure or postclosure expenditures, including partial closure, as applicable. Requests for reimbursement will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure or postclosure, and if justification and documentation of the cost are placed in the operating record. The owner or operator must submit to the department documentation of the justification for reimbursement and verification that the reimbursement has been received.

(5) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused.

(6) The insurance policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner or operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice from the insurer of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the insurance coverage into a standby trust fund established pursuant to paragraph 103.3(6)"a." If the owner or operator has not complied with this subparagraph within the 60–day time period, this shall constitute a failure to perform and shall be a covered event pursuant to the terms of the insurance policy. A failure by the owner or operator to comply with this subparagraph within the 60–day period shall make the insurer liable for the closure and postclosure of the covered facility up to the amount of the policy limits, which shall be equal to the most recently submitted cost estimates.

(7) For insurance policies providing coverage for postclosure, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount

equivalent to 85 percent of the most recent investment rate or of the equivalent coupon–issue yield announced by the U.S. Treasury for 26–week treasury securities.

(8) The owner or operator may cancel the insurance only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

e. Corporate financial test. An owner or operator that satisfies the requirements of this paragraph may demonstrate financial assurance up to the amount specified below:

(1) Financial component. The owner or operator must satisfy the requirements of numbered paragraphs 103.3(6)“e”(1)“1,” “2” and “3” to meet the financial component of the corporate financial test.

1. The owner or operator must satisfy one of the following three conditions:

• A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard & Poor’s or Aaa, Aa, A or Baa as issued by Moody’s; or

• A ratio of less than 1.5 comparing total liabilities to net worth (net worth calculations may not include future permitted capacity of the subject landfill as an asset); or

• A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus $10 million, to total liabilities;

2. The tangible net worth, excluding future permitted capacity of the subject landfill, of the owner or operator must be greater than:

• The sum of the current closure, postclosure, and corrective action cost estimates and any other environmental obligations, including guarantees, covered by this financial test plus $10 million except as provided in the second bulleted paragraph of numbered paragraph 103.3(6)“e” (1)“2”; or

• Net worth of $10 million, excluding future permitted capacity of the subject landfill, plus the amount of any guarantees that have not been recognized as liabilities on the financial statements, provided that all of the current closure, postclosure, and corrective action costs and any other environmental obligations covered by a financial test are recognized as liabilities on the owner’s or operator’s audited financial statements, and are subject to the approval of the department; and

3. The owner or operator must have, located in the United States, assets, excluding future permitted capacity of the subject landfill, amounting to at least the sum of current closure, postclosure, and corrective action cost estimates and any other environmental obligations covered by a financial test as described in subparagraph 103.3(6)“e”(5).

(2) Record–keeping and reporting requirements. The owner or operator must submit the following records to the department and place a copy in the facility’s official files prior to the initial receipt of solid waste or cancellation of an alternative financial assurance instrument, in the case of closure and postclosure; or no later than 120 days after the corrective action plan has been approved by the department:

1. A letter signed by a certified public accountant and based upon a certified audit that:

• Lists all the current cost estimates covered by a financial test including, but not limited to, cost estimates required by subrules 103.3(3) to 103.3(5); cost estimates required for municipal solid waste management facilities pursuant to 40 CFR Part 258; cost estimates required for UIC facilities under 40 CFR Part 144, if applicable; cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable; cost estimates required for PCB storage facilities under 40 CFR Part 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable; and

• Provides evidence demonstrating that the owner or operator meets the conditions of subparagraph 103.3(6)“e”(1).

2. A copy of the independent certified public accountant’s unqualified opinion of the owner’s or operator’s financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner’s or operator’s financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion or disclaimer of opinion shall be cause for disallowance of this mechanism. A qualified opinion related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance. If the department does not allow use of the corporate financial test, the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

3. If the certified public accountant’s letter providing evidence of financial assurance includes financial data which shows that the owner or operator satisfies subparagraph 103.3(6)“e”(1) but which differs from data in the audited financial statements referred to in numbered paragraph 103.3(6)“e”(2)“2,” then a special report from the owner’s or operator’s independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed–upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the certified public accountant’s letter derived from the independently audited, year–end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

4. If the certified public accountant’s letter provides a demonstration that the owner or operator has assured for environmental obligations as provided in the second bulleted paragraph of numbered paragraph 103.3(6)“e”(2)“1,” then the letter shall include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements and that documents how these obligations have been measured and reported, and verifies that the tangible net worth of the owner or operator is at least $10 million plus the amount of any guarantees provided.

(3) The owner or operator may cease the submission of the information required by paragraph 103.3(6)“e” only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

(4) The department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subparagraph 103.3(6)“e”(1), require the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in subparagraph 103.3(6)“e”(2). If the

department finds that the owner or operator no longer meets the requirements of subparagraph 103.3(6)“e”(1), the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

(5) Calculation of costs to be assured. When calculating the current cost estimates for closure, postclosure, corrective action, or the sum of the combination of such costs to be covered, and any other environmental obligations assured by a financial test referred to in paragraph 103.3(6)“e,” the owner or operator must include cost estimates required for subrules 103.3(3) to 103.3(5); cost estimates for municipal solid waste management facilities pursuant to 40 CFR Section 258.74; and cost estimates required for the following environmental obligations, if the owner or operator assures those environmental obligations through a financial test: obligations associated with UIC facilities under 40 CFR Part 144, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265.

f. Local government financial test. An owner or operator that satisfies the requirements of this paragraph may demonstrate financial assurance up to the amount specified below:

(1) Financial component.

1. The owner or operator must satisfy one of the following requirements:

• If the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, the owner or operator must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody’s, or AAA, AA, A, or BBB, as issued by Standard & Poor’s, on all such general obligation bonds; or

• The owner or operator must satisfy both of the following financial ratios based on the owner’s or operator’s most recent audited annual financial statement: a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05, and a ratio of annual debt service to total expenditures less than or equal to 0.20.

2. The owner or operator must prepare its financial statements in conformity with Generally Accepted Accounting Principles or Other Comprehensive Bases of Accounting and have its financial statements audited by an independent certified public accountant or the office of the auditor of the state of Iowa. The financial statement shall be in the form prescribed by the office of the auditor of the state of Iowa.

3. A local government is not eligible to assure its obligations in paragraph 103.3(6)“f” if it:

• Is currently in default on any outstanding general obligation bonds; or

• Has any outstanding general obligation bonds rated lower than Baa as issued by Moody’s or BBB as issued by Standard & Poor’s; or

• Operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or

• Receives an adverse opinion or disclaimer of opinion from the independent certified public accountant or office of the auditor of the state of Iowa auditing its financial statement as required under numbered paragraph 103.3(6)“f”(1)“2.” A qualified opinion that is related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance of this mechanism.

4. The following terms used in this paragraph are defined as follows:

• "Cash plus marketable securities" means all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions.

• "Debt service" means the amount of principal and interest due on a loan in a given time period, typically the current year.

• "Deficit" means total annual revenues minus total annual expenditures.

• "Total expenditures" means all expenditures, excluding capital outlays and debt repayment.

• "Total revenues" means revenues from all taxes and fees, excluding revenue from funds managed by local government on behalf of a specific third party, and does not include the proceeds from borrowing or asset sales.

(2) Public notice component. The local government owner or operator must include disclosure of the closure and postclosure costs assured through the financial test in its next annual audit report prior to the initial receipt of waste at the facility or prior to cancellation of an alternative financial assurance mechanism, whichever is later. A reference to corrective action costs must be placed in the next annual audit report after the corrective action plan is approved by the department. For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the facility's official files until issuance of the next available annual audit report if timing does not permit the reference to be incorporated into the most recently issued annual audit report or budget. For closure and postclosure costs, conformance with Governmental Accounting Standards Board Statement 18 ensures compliance with this public notice component.

(3) Record–keeping and reporting requirements.

1. The local government owner or operator must submit to the department the following items:

• A letter signed by the local government's chief financial officer that lists all the current cost estimates covered by a financial test, as described in subparagraph 103.3(6)"f"(4); provides evidence and certifies that the local government meets the conditions of numbered paragraphs 103.3(6)"f"(1)"1," "2," and "3"; and certifies that the local government meets the conditions of subparagraphs 103.3(6)"f"(2) and (4); and

• The local government's annual financial report indicating compliance with the financial ratios required by numbered paragraph 103.3(6)"f"(1)"1," second bulleted paragraph, if applicable, and the requirements of numbered paragraph 103.3(6)"f"(1)"2" and the third and fourth bulleted paragraphs of numbered paragraph 103.3(6)"f"(1)"3" and also indicating that the requirements of Governmental Accounting Standards Board Statement 18 have been met.

2. The items required in numbered paragraph 103.3(6)"f"(3)"1" must be submitted to the department and placed in the facility's official files prior to the receipt of waste or prior to the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or, in the case of corrective action, not later than 120 days after the corrective action plan is approved by the department.

3. After the initial submission of the required items and their placement in the facility's official files, the local government owner or operator must update the information and place the updated information in the facility's official files within 180 days following the close of the owner's or operator's fiscal year.

4. The owner or operator may cease the submission of the information required by paragraph 103.3(6)"f" only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

5. A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test, the local government must, within 180 days following the close of the owner's or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this rule, place the required submissions for that assurance in the operating record, and notify the department that the owner or operator no longer meets the criteria of the financial test and that alternative financial assurance has been obtained.

6. The department, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial conditions from the local government. If the department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of the local government financial test, the local government must provide alternative financial assurance in accordance with this rule.

(4) Calculation of costs to be assured. The portion of the closure, postclosure, and corrective action costs which an owner or operator may assure under this paragraph is determined as follows:

1. If the local government owner or operator does not assure other environmental obligations through a financial test, the owner or operator may assure closure, postclosure, and corrective action costs that equal up to 43 percent of the local government's total annual revenue.

2. If the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40 CFR Section 144.62, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, the owner or operator must add those costs to the closure, postclosure, and corrective action costs it seeks to assure under this paragraph. The total that may be assured must not exceed 43 percent of the local government's total annual revenue.

3. The owner or operator must obtain an alternative financial assurance instrument for those costs that exceed the limits set in numbered paragraphs 103.3(6)"f"(4)"1" and "2."

g. Corporate guarantee.

(1) An owner or operator may meet the requirements of this paragraph by obtaining a written guarantee. The guarantor must be the direct or higher–tier parent corporation of the owner or operator, an owner or operator whose parent corporation is also the parent corporation of the owner or operator, or an owner or operator with a "substantial

business relationship'' with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraph 103.3(6)"~~g~~e" and must comply with the terms of the guarantee. A certified copy of the guarantee must be placed in the facility's operating record along with copies of the letter from a certified public accountant and the accountant's opinions. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter from the certified public accountant must describe the value received in consideration of the guarantee. If the guarantor is an owner or operator with a ''substantial business relationship'' with the owner or operator, this letter must describe this ''substantial business relationship'' and the value received in consideration of the guarantee.

(2) The guarantee must be effective and all required submissions made to the department prior to the initial receipt of waste or before cancellation of an alternative financial mechanism, in the case of closure and postclosure; or, in the case of corrective action, no later than 120 days after the corrective action plan has been approved by the department.

(3) The terms of the guarantee must provide that:

1. If the owner or operator fails to perform closure, postclosure, or corrective action of a facility covered by the guarantee, or fails to obtain alternative financial assurance within 90 days of notice of intent to cancel pursuant to numbered paragraphs 103.3(6)"g"(3)"2" and "3," the guarantor will:

- Perform, or pay a third party to perform, closure, postclosure, or corrective action as required (performance guarantee); or
- Establish a fully funded trust fund as specified in paragraph 103.3(6)"a" in the name of the owner or operator (payment guarantee); or
- Obtain alternative financial assurance as required by numbered paragraph 103.3(6)"g"(3)"3."

2. The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements of this rule unless the guarantor sends prior notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the department, as evidenced by the return receipts.

3. If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the department, provide to the department adequate proof of alternative financial assurance, notice from the guarantor of withdrawal of the cancellation, or proof of the establishment of a fully funded trust fund pursuant to paragraph 103.3(6)"a." If the owner or operator fails to comply with the provisions of this numbered paragraph within the 90–day period, the guarantor must provide that alternative financial assurance prior to cancellation of the corporate guarantee.

(4) If a corporate guarantor no longer meets the requirements of paragraph 103.3(6)"e," the owner or operator must, within 90 days, obtain alternative financial assurance and submit proof of alternative financial assurance to the department. If the owner or operator fails to provide alternative financial assurance within the 90–day period, the guarantor must provide that alternative financial assurance within the next 30 days.

(5) The owner or operator is no longer required to meet the requirements of paragraph 103.3(6)“g” upon the submission to the department of proof of the substitution of alternative financial assurance or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

h. Local government guarantee. An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action by obtaining a written guarantee provided by a local government or jointly provided by the members of an agency established pursuant to Iowa Code chapter 28E. The guarantor must meet the requirements of the local government financial test in paragraph 103.3(6)“f” and must comply with the terms of a written guarantee.

(1) Terms of the written guarantee. The guarantee must be effective before the initial receipt of waste or before the cancellation of alternative financial assurance, in the case of closure and postclosure; or no later than 120 days after the corrective action plan is approved by the department. The guarantee must provide that:

1. If the owner or operator fails to perform closure, postclosure, or corrective action of a facility covered by the guarantee or fails to obtain alternative financial assurance within 90 days of notice of intent to cancel pursuant to numbered paragraphs 103.3(6)“h”(1)“2” and “3,” the guarantor will:

- Perform, or pay a third party to perform, closure, postclosure, or corrective action as required; or
- Establish a fully funded trust fund as specified in paragraph 103.3(6)“a” in the name of the owner or operator; or
- Obtain alternative financial assurance as required by numbered paragraph 103.3(6)“h”(1)“3.”

2. The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements of this rule unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the department as evidenced by the return receipts.

3. If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the department, provide to the department adequate proof of alternative financial assurance, notice from the guarantor of withdrawal of the cancellation, or proof of the establishment of a fully funded trust fund pursuant to paragraph 103.3(6)“a.” If the owner or operator fails to comply with the provisions of this numbered paragraph within the 90–day period, the guarantor must provide that alternative financial assurance prior to cancellation of the guarantee.

(2) Record–keeping and reporting requirements.

1. The owner or operator must submit to the department a certified copy of the guarantee along with the items required under subparagraph 103.3(6)“f”(3) and place a copy in the facility’s official files before the initial receipt of waste or before cancellation of alternative financial assurance, whichever is later, in the case of closure and postclosure; or no later than 120 days after the corrective action plan has been approved by the department.

2. The owner or operator shall no longer be required to submit the items specified in numbered paragraph 103.3(6)“h”(2)“1” when proof of alternative financial assurance has been submitted to the department or the owner or operator is no longer required to provide financial assurance pursuant to this rule.

3. If a local government guarantor no longer meets the requirements of paragraph 103.3(6)“f,” the owner or operator must, within the 90–day period, submit to the department proof of alternative financial assurance. If the owner or operator fails to obtain alternative financial assurance within the 90–day period, the guarantor must provide that alternative financial assurance within the next 30 days.

i. Local government dedicated fund. The owner or operator of a publicly owned CCR landfill or local government serving as a guarantor may demonstrate financial assurance for closure, postclosure, or corrective action, whichever is applicable, by establishing a dedicated fund or account that conforms to the requirements of this paragraph. A dedicated fund will be considered eligible if it complies with subparagraph 103.3(6)“i”(1) or (2) below, and all other provisions of this paragraph, and documentation of this compliance has been submitted to the department.

(1) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, or order to pay for closure, postclosure, or corrective action costs that arise from the operation of the CCR landfill and shall be funded for the full amount of coverage or funded for part of the required amount of coverage and used in combination with another mechanism(s) that provides the remaining coverage.

(2) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, or order as a reserve fund and shall be funded for no less than the full amount of coverage or funded for part of the required amount of coverage and used in combination with another mechanism(s) that provides the remaining coverage.

(3) Payments into the dedicated fund must be made annually by the owner or operator for ten years or over the permitted life of the CCR landfill, whichever is shorter, in the case of a dedicated fund for closure or postclosure; or over one–half of the estimated length of an approved corrective action plan in the case of a response to a known release. This is referred to as the pay–in period. The initial payment into the dedicated fund must be made before the initial receipt of waste in the case of closure and postclosure or no later than 120 days after the corrective action plan has been approved by the department.

(4) For a dedicated fund used to demonstrate financial assurance for closure and postclosure, the first payment into the dedicated fund must be at least equal to the amount specified in subrule 103.3(9), divided by the number of years in the pay–in period as defined in paragraph 103.3(6)“i.” The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{CE - CB}{Y}$$

where CE is the total required financial assurance for the owner or operator, CB is the current balance of the fund, and Y is the number of years remaining in the pay–in period.

(5) For a dedicated fund used to demonstrate financial assurance for corrective action, the first payment into the dedicated fund must be at least one–half of the current cost estimate, divided by the number of years in the corrective action pay–in period as defined in paragraph 103.3(6)“i.” The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{RB - CF}{Y}$$

where RB is the most recent estimate of the required dedicated fund balance, which is the total cost that will be incurred during the second half of the corrective action period, CF is the current amount in the dedicated fund, and Y is the number of years remaining in the pay–in period.

(6) The initial payment into the dedicated fund must be made before the initial receipt of waste or within 30 days of close of the first fiscal year that begins after [the effective date of this rule] in the case of existing facilities, or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or no later than 120 days after the corrective action remedy has been approved by the department.

(7) After the pay–in period has been completed, the dedicated fund shall be adjusted annually to correct any deficiency of the fund with respect to the adjusted cost estimate and may be adjusted annually should the balance in the fund exceed the adjusted cost estimate.

103.3(7) General requirements.

a. Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this rule by establishing more than one financial mechanism per facility. The mechanisms must be a combination of those mechanisms outlined in this rule and must provide financial assurance for an amount at least equal to the current cost estimate for closure, postclosure, or corrective action, whichever is applicable. The financial test and a guarantee provided by a corporate parent, sibling or grandparent shall not be combined if the financial statements of the two entities are consolidated.

b. Use of one mechanism for multiple facilities. An owner or operator may satisfy the requirements of this rule for multiple CCR landfills by the use of one mechanism if the owner or operator ensures that the mechanism provides financial assurance for an amount at least equal to the current cost estimates for closure, postclosure, or corrective action, whichever is applicable, for all CCR landfills covered.

c. Criteria. The language of the financial assurance mechanisms listed in this rule must ensure that the instruments satisfy the following criteria:

(1) The financial assurance mechanisms must ensure that the amount of funds assured is sufficient to cover the costs of closure, postclosure, or corrective action for known releases, whichever is applicable;

(2) The financial assurance mechanisms must ensure that funds will be available in a timely fashion when needed;

(3) The financial assurance mechanisms must be obtained by the owner or operator prior to the initial receipt of solid waste and no later than 120 days after the corrective action remedy has been approved by the department until the owner or operator is released from the financial assurance requirements; and

(4) The financial assurance mechanisms must be legally valid, binding, and enforceable under Iowa law.

d. No permit shall be issued by the department pursuant to Iowa Code Supplement section 455B.305 unless the applicant has demonstrated compliance with rule 103.3(455B).

103.3(8) Amount of required financial assurance. A financial assurance mechanism established pursuant to subrule 103.3(6) shall be in the amount of the third–party cost estimates required by subrules 103.3(3), 103.3(4), and 103.3(5) except that the amount of the financial assurance may be reduced by the sum of the cash balance in a trust fund or local government dedicated fund established to comply with subrule 103.3(8) plus the current value of investments held by said trust fund or local government dedicated fund if invested in one or more of the investments listed in Iowa Code section 12B.10(5).

ITEM 2. Amend 567—Chapter 104 by adopting the following **new** rule:

567—104.26(455D) Financial assurance for solid waste processing facilities. Permitted solid waste processing facilities must obtain and submit a financial assurance instrument to the department for pre and post-processed waste storage in accordance with this rule. The financial assurance instrument shall provide monetary funds to properly dispose of any materials that may remain at a facility due to the owner's or operator's failure to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

104.26(1) No permit without financial assurance. A permit shall not be issued or renewed to the owner or operator of a solid waste processing facility until a financial assurance instrument has been submitted to and approved by the department.

104.26(2) Proof of compliance. Proof of the establishment of the financial assurance instrument and compliance with this rule, including a current closure cost estimate, shall be submitted to the department by July 1, 2008, or at the time of application for a permit for a new solid waste processing facility or application for a permit renewal, whichever occurs first. The owner or operator must provide continuous coverage for closure and submit proof of compliance, including an updated closure cost estimate, with each permit renewal thereafter until released from this requirement by the department.

104.26(3) Use of one financial assurance instrument for multiple permitted activities. Solid waste processing facilities required to maintain financial assurance pursuant to any other provisions of 567-Chapters 100 to 123 may satisfy the requirements of this rule by the use of one financial assurance instrument if the permit holder ensures that the instrument provides financial assurance for an amount at least equal to the current cost estimates for closure of all sanitary disposal project activities covered.

104.26(4) Financial assurance amounts required. The estimate submitted to the department must be certified by an Iowa-licensed professional engineer and account for at least the following factors determined by the department to be minimal necessary costs for closure:

a. The cost of hiring a third party to properly clean and decontaminate all equipment, storage facilities, holding areas and drainage collection systems pursuant to subrule 104.11(1). This estimate shall include the cost of properly disposing of a one-week volume of washwater from the processing facility. If the facility utilizes washwater storage tanks, then this estimate shall assume that the storage tanks are full and add that volume to the one-week volume.

b. Third party labor and transportation costs and total tip fees to properly dispose of all pre and post-processed waste equal to the maximum storage capacity of the processing facility pursuant to subrule 104.11(2). If materials are temporarily stored on site in transportation vehicles or waste receptacles, then this estimate shall include disposal costs for the maximum number of transportation vehicles and waste receptacles that can be on site at any one time.

c. The costs for maintaining financial assurance pursuant to any other provisions of 567-Chapters 100 to 123, if any, in accordance with subrule 104.26(3).

104.26(5) Acceptable financial assurance instruments. The financial assurance instrument shall be established in an amount equal to the cost estimate prepared in accordance with subrule 104.26(4), and shall not be canceled, revoked, disbursed, released, or allowed to terminate without the approval of the department. Financial assurance may be provided by cash in the form of a secured trust fund or local government dedicated fund, surety bond, letter of credit, or corporate or local government guarantee, as follows:

a. Secured trust fund. The owner or operator of a solid waste processing facility or entity serving as a guarantor may demonstrate financial assurance for closure by establishing a secured trust fund that conforms to the requirements of this paragraph.

(1) The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. The fund shall be restricted for the sole purpose of funding closure activities at the facility and a copy of the trust agreement must be submitted to the department and placed in the facility's official files.

(2) A secured trust fund shall name the department of natural resources as the entity authorized to draw funds from the trust, subject to proper notification to the trust officer of failure by the permittee to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

(3) Money in the fund shall not be assigned for the benefit of creditors with the exception of the state.

(4) Money in the fund shall not be used to pay any final judgment against a permit holder arising out of the ownership or operation of the site during its active life or after closure.

(5) The owner or operator, or other person authorized to conduct closure activities may request reimbursement from the trustee for closure expenditures as they are incurred. Requests for reimbursement shall be granted by the trustee

only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure and if documentation of the justification for reimbursement has been submitted to the department for prior approval.

(6) If the balance of the trust fund exceeds the current cost estimate for closure at any time, the owner or operator may request withdrawal of the excess funds from the trustee so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

b. Local government dedicated fund. The owner or operator of a publicly owned solid waste processing facility or local government serving as a guarantor may demonstrate financial assurance for closure by establishing a dedicated fund that conforms to the requirements of this paragraph.

(1) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, resolution or order as a restricted fund to pay for closure costs arising from the operation of the solid waste processing facility.

(2) A copy of the document establishing the dedicated fund must be submitted to the department and placed in the facility's official files.

(3) If the balance of the dedicated fund exceeds the current cost estimate for closure at any time, the owner or operator may withdraw excess funds so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

c. Surety bond. A surety bond must be written by a company authorized by the commissioner of insurance to do business in the state, and the surety bond shall comply with the following:

(1) The bond shall be in a form approved by the commissioner of insurance and shall be payable to the department of natural resources.

(2) The bond shall be specific to a particular facility for the purpose of properly disposing of any pre and post-processed waste that may remain on site due to the owner's or operator's failure to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

(3) The owner or operator shall provide the department with a statement from the surety with each permit application renewal, noting that the bond is paid and current for the permit period for which the owner or operator has applied for renewal.

d. Letter of credit. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency.

(1) The owner or operator must submit to the department a copy of the letter of credit and place a copy in the facility's official files.

(2) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the name and address of the facility, and the amount of funds assured, must be included with the letter of credit submitted to the department and placed in the facility's files.

(3) The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the department 90 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the letter of credit into a secured trust fund that meets the requirements of paragraph 104.26(5)"a." If the owner or operator has not complied with this subrule within the 60-day time period, the issuer of the letter of credit shall deposit a sum equal to the amount of the letter of credit into the secured trust fund established by the owner or operator. The provision of funds by the issuer of the letter of credit shall be considered an issuance of a loan to the owner or operator, and the terms of that loan shall be governed by the letter of credit or subsequent agreement between those parties. The state shall not be considered a party to this credit transaction.

e. Corporate guarantee. An owner or operator may meet the requirements of this rule by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, an owner or operator whose parent corporation is also the parent corporation of the owner or operator, or an owner or operator with a "substantial business relationship'' with the owner or operator.

(1) The terms of the written guarantee must provide that within 30 days of the owner's or operator's failure to perform closure of a facility covered by the guarantee, the guarantor will:

1. Perform, or pay a third party to perform closure as required (performance guarantee);

2. Establish a fully funded secured trust fund as specified in paragraph 104.26(5)"a" in the name of the owner or operator (payment guarantee); or

3. Establish an alternative financial assurance instrument in the name of the owner or operator as required by this rule.

(2) The guarantor must satisfy one of the following three conditions:

1. A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard & Poor's or Aaa, Aa, A or Baa as issued by Moody's; or

2. A ratio of less than 1.5 comparing total liabilities to net worth; or

3. A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus $10 million, to total liabilities;

(3) The tangible net worth of the guarantor must be greater than the sum of the current closure cost estimate and any other environmental obligations, including other financial assurance guarantees.

(4) The guarantor must have assets amounting to at least the sum of current closure cost estimate and any other environmental obligations, including other financial assurance guarantees.

(5) Record-keeping and reporting requirements. The guarantor must submit the following records to the department and place a copy in the facility's official files:

1. A copy of the written guarantee between the owner or operator and the guarantor;

2. A letter signed by a certified public accountant and based upon a certified audit that:

• Lists all the current cost estimates covered by a guarantee including, but not limited to, cost estimates required by subrule 104.26(4); cost estimates required for municipal solid waste management facilities pursuant to 40 CFR Part 258; cost estimates required for UIC facilities under 40 CFR Part 144, if applicable; cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable; cost estimates required for PCB storage facilities under 40 CFR Part 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable; and

• Provides evidence demonstrating that the guarantor meets the conditions of subparagraphs 104.26(5)"e"(2), (3) and (4).

3. A copy of the independent certified public accountant's unqualified opinion of the guarantor's financial statements for the latest completed fiscal year. To be eligible to use the guarantee, the guarantor's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion or disclaimer of opinion shall be cause for disallowance of this instrument. A qualified opinion related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance. If the department does not allow use of the corporate guarantee, the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

f. Local government guarantee. An owner or operator may demonstrate financial assurance for closure by obtaining a written guarantee provided by a local government or jointly provided by the members of an agency established pursuant to Iowa Code chapter 28E.

(1) The terms of the written guarantee must provide that within 30 days of the owner's or operator's failure to perform closure of a facility covered by the guarantee, the guarantor will:

1. Perform, or pay a third party to perform closure as required (performance guarantee);

2. Establish a fully funded secured trust fund as specified in paragraph 104.26(5)"a" in the name of the owner or operator (payment guarantee); or

3. Establish an alternative financial assurance instrument in the name of the owner or operator as required by this rule.

(2) The guarantor must satisfy one of the following requirements:

1. If the guarantor has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, the guarantor must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard & Poor's on all such general obligation bonds; or

2. The guarantor must satisfy each of the following financial ratios based on the guarantor's most recent audited annual financial statement: a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05, and a ratio of annual debt service to total expenditures less than or equal to 0.20.

(3) The guarantor must prepare its financial statements in conformity with Generally Accepted Accounting Principles or Other Comprehensive Bases of Accounting and have its financial statements audited by an independent certified public accountant or the office of the auditor of the state of Iowa. The financial statement shall be in the form prescribed by the office of the auditor of the state of Iowa.

(4) A guarantor is not eligible to assure its obligations if it:

1. Is currently in default on any outstanding general obligation bonds; or

2. Has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard & Poor's; or

3. Operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or

4. Receives an adverse opinion or disclaimer of opinion from the independent certified public accountant or office of the auditor of the state of Iowa auditing its financial statement. A qualified opinion that is related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance of this mechanism.

5. The closure costs to be assured are greater than 43 percent of the guarantor's total annual revenue.

(5) The local government guarantor must include disclosure of the closure costs assured through the guarantee in its next annual audit report prior to the initial receipt of waste at the facility or prior to cancellation of an alternative financial assurance instrument, whichever is later. For the first year the guarantee is used to assure costs at a particular facility, the reference may instead be placed in the guarantor's official files until issuance of the next available annual audit report if timing does not permit the reference to be incorporated into the most recently issued annual audit report or budget. For closure costs, conformance with Government Accounting Standards Board Statement 18 ensures compliance with this public notice component.

(6) The local government owner or operator must submit to the department the following items:

1. A copy of the written guarantee between the owner or operator and the local government serving as guarantor for the closure costs at the facility.

2. A copy of the guarantor's most recent annual financial audit report indicating compliance with the financial ratios required by the second numbered paragraph of subparagraph 104.26(5)"f"(2), if applicable, and the requirements of subparagraphs 104.26(5)"f"(3) and (4).

3. A letter signed by the local government's chief financial officer that lists all the current cost estimates covered by the guarantor, as described in subrule 104.26(4); and provides evidence and certifies that the local government meets the conditions of subparagraphs 104.26(5)"f"(2), (3), (4) and (5).

104.26(6) Financial assurance cancellation and permit suspension.

a. A financial assurance instrument may be terminated by the owner or operator only if the owner or operator substitutes alternate financial assurance prior to cancellation, as specified in this rule or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

b. A financial assurance instrument shall be continuous in nature until canceled by the financial assurance provider or until the department gives written notification to the owner, operator, and financial assurance provider that the covered site has been properly closed. The financial assurance provider shall provide at least 90 days' notice in writing to the owner or operator and the department in the event of any intent to cancel the instrument.

c. Within 60 days of receipt of a written notice of cancellation of financial assurance by the financial assurance provider, the owner or operator must provide the department an alternative financial assurance instrument. If a means of continued financial assurance is not provided within that 60 days, the department shall suspend the permit.

d. The owner or operator shall perform proper closure within 30 days of the permit suspension. For the purpose of this rule, proper closure means completion of all items pursuant to rule 104.11(455B) and subrule 104.26(4).

e. If the owner or operator does not properly close the site within the 30-day period allowed, the department shall file a claim with the financial assurance instrument provider to collect the amount of funds necessary to properly close the site.

f. An owner or operator who elects to terminate a permitted activity, or whose renewal application has been denied, or whose permit has been suspended or revoked for cause, must submit within 30 days of the termination of the permit a schedule for completing proper closure of the terminated activity. Closure completion cannot exceed 60 days from the date of termination of the permit.

g. The director may also request payment from any financial assurance provider to provide for the purpose of completing closure when the following circumstances exist:

(1) The owner or operator is more than 15 days late in providing a schedule for closure or for meeting any date in the schedule for closure.

(2) The owner or operator declares an economic inability to comply with this rule, either by sending written notification to the director or through an action such as, but not limited to, filing for bankruptcy.

ITEM 3. Amend rule 567—105.14(455B,455D) as follows:

567—105.14(455B,455D) Composting facility financial assurance. Permitted solid waste composting facilities receiving over 5,000 tons of feedstock annually, bulking agent excluded, must obtain and submit a financial assurance instrument to the department for waste materials received and stockpiled by the facility, in accordance with this rule. The financial assurance instrument shall provide monetary funds to properly dispose of any pre and post processed stockpiled materials that may remain at a facility due to the owner's or operator's failure to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

105.14(1) No permit without financial assurance. A permit shall not be issued or renewed to the owner or operator of a solid waste composting facility until a financial assurance instrument has been submitted to and approved by the department.

105.14(2) Proof of compliance. Proof of the establishment of the financial assurance instrument and compliance with this rule, including a current closure cost estimate, shall be submitted to the department within 30 days of the close of the permit holder's first fiscal year that begins after June 19, 2002, or at the time of application for a permit for a new solid waste composting facility. The owner or operator must provide continuous coverage for closure and submit proof of compliance, including an updated closure cost estimate, with each permit renewal thereafter until released from this requirement by the department.

105.14(3) Use of one financial assurance instrument for multiple permitted activities. Solid waste composting facilities required to maintain financial assurance pursuant to any other provisions of 567-Chapters 100 to 123 may satisfy the requirements of this rule by the use of one financial assurance instrument if the permit holder ensures that the instrument provides financial assurance for an amount at least equal to the current cost estimates for closure of all sanitary disposal project activities covered.

105.14(4) Financial assurance amounts required. The estimate submitted to the department must be certified by an Iowa-licensed professional engineer and account for at least the following factors determined by the department to be minimal necessary costs for closure:

a. Transportation costs, which include the cost to load the material, and total tip fees to properly dispose of the maximum tonnage of received materials that could be managed and stockpiled by the compost facility. Also included shall be the costs of properly removing any wastewater held at the facility, or

b. Cost of approved beneficial reuse option, approved pursuant to subrule 105.13(3), for the total amount of material that could be managed and stockpiled by the composting facility. If the total amount of material will not be beneficially reused, the remainder of the cost shall be calculated according to paragraph 105.14(4)"a." Also included shall be the costs of properly removing any wastewater held at the facility.

c. The costs for maintaining financial assurance pursuant to any other provisions of 567-Chapters 100 to 123, if any, in accordance with subrule 105.14(3).

105.14(5) Acceptable financial assurance instruments. The financial assurance instrument shall be established in an amount equal to the cost estimate prepared in accordance with subrule 105.14(4), and shall not be canceled, revoked, disbursed, released, or allowed to terminate without the approval of the department. Financial assurance may be provided by cash in the form of a secured trust fund or local government dedicated fund, surety bond, letter of credit, or corporate or local government guarantee, as follows:

a. Secured trust fund. The owner or operator of a solid waste composting facility or entity serving as a guarantor may demonstrate financial assurance for closure by establishing a secured trust fund that conforms to the requirements of this paragraph.

(1) The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. The fund shall be restricted for the sole purpose of funding closure activities at the facility and a copy of the trust agreement must be submitted to the department and placed in the facility's official files.

(2) A secured trust fund shall name the department of natural resources as the entity authorized to draw funds from the trust, subject to proper notification to the trust officer of failure by the permittee to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

(3) Money in the fund shall not be assigned for the benefit of creditors with the exception of the state.

(4) Money in the fund shall not be used to pay any final judgment against a permit holder arising out of the ownership or operation of the site during its active life or after closure.

(5) The owner or operator, or other person authorized to conduct closure activities may request reimbursement from the trustee for closure expenditures as they are incurred. Requests for reimbursement shall be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure and if documentation of the justification for reimbursement has been submitted to the department for prior approval.

(6) If the balance of the trust fund exceeds the current cost estimate for closure at any time, the owner or operator may request withdrawal of the excess funds from the trustee so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

b. Local government dedicated fund. The owner or operator of a publicly owned solid waste composting facility or local government serving as a guarantor may demonstrate financial assurance for closure by establishing a dedicated fund that conforms to the requirements of this paragraph.

(1) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, resolution or order as a restricted fund to pay for closure costs arising from the operation of the solid waste composting facility.

(2) A copy of the document establishing the dedicated fund must be submitted to the department and placed in the facility's official files.

(3) If the balance of the dedicated fund exceeds the current cost estimate for closure at any time, the owner or operator may withdraw excess funds so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

c. Surety bond. A surety bond must be written by a company authorized by the commissioner of insurance to do business in the state, and the surety bond shall comply with the following:

(1) The bond shall be in a form approved by the commissioner of insurance and shall be payable to the department of natural resources.

(2) The bond shall be specific to a particular facility for the purpose of properly disposing of any solid waste that may remain on site due to the owner's or operator's failure to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

(3) The owner or operator shall provide the department with a statement from the surety with each permit application renewal, noting that the bond is paid and current for the permit period for which the owner or operator has applied for renewal.

d. Letter of credit. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency.

(1) The owner or operator must submit to the department a copy of the letter of credit and place a copy in the facility's official files.

(2) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the name and address of the facility, and the amount of funds assured, must be included with the letter of credit submitted to the department and placed in the facility's files.

(3) The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the department 90 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the letter of credit into a secured trust fund that meets the requirements of paragraph 105.14(5)"a." If the owner or operator has not complied with this subrule within the 60-day time period, the issuer of the letter of credit shall deposit a sum equal to the amount of the letter of credit into the secured trust fund established by the owner or operator. The provision of funds by the issuer of the letter of credit shall be considered an issuance of a loan to the owner or operator, and the terms of that loan shall be governed by the letter of credit or subsequent agreement between those parties. The state shall not be considered a party to this credit transaction.

e. Corporate guarantee. An owner or operator may meet the requirements of this rule by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, an owner or operator whose parent corporation is also the parent corporation of the owner or operator, or an owner or operator with a "substantial business relationship'' with the owner or operator.

(1) The terms of the written guarantee must provide that within 30 days of the owner's or operator's failure to perform closure of a facility covered by the guarantee, the guarantor will:

1. Perform, or pay a third party to perform closure as required (performance guarantee);

2. Establish a fully funded secured trust fund as specified in paragraph 105.14(5)"a" in the name of the owner or operator (payment guarantee); or

3. Establish an alternative financial assurance instrument in the name of the owner or operator as required by this rule.

(2) The guarantor must satisfy one of the following three conditions:

1. A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard & Poor's or Aaa, Aa, A or Baa as issued by Moody's; or

2. A ratio of less than 1.5 comparing total liabilities to net worth; or

3. A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus $10 million, to total liabilities;

(3) The tangible net worth of the guarantor must be greater than the sum of the current closure cost estimate and any other environmental obligations, including other financial assurance guarantees.

(4) The guarantor must have assets amounting to at least the sum of current closure cost estimate and any other environmental obligations, including other financial assurance guarantees.

(5) Record-keeping and reporting requirements. The guarantor must submit the following records to the department and place a copy in the facility's official files:

1. A copy of the written guarantee between the owner or operator and the guarantor;

2. A letter signed by a certified public accountant and based upon a certified audit that:

• Lists all the current cost estimates covered by a guarantee including, but not limited to, cost estimates required by subrule 105.14(4); cost estimates required for municipal solid waste management facilities pursuant to 40 CFR Part 258; cost estimates required for UIC facilities under 40 CFR Part 144, if applicable; cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable; cost estimates required for PCB storage facilities under 40 CFR Part 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable; and

• Provides evidence demonstrating that the guarantor meets the conditions of subparagraphs 105.14(5)"e"(2), (3) and (4).

3. A copy of the independent certified public accountant's unqualified opinion of the guarantor's financial statements for the latest completed fiscal year. To be eligible to use the guarantee, the guarantor's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion or disclaimer of opinion shall be cause for disallowance of this instrument. A qualified opinion related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance. If the department does not allow use of the corporate guarantee, the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

f. Local government guarantee. An owner or operator may demonstrate financial assurance for closure by obtaining a written guarantee provided by a local government or jointly provided by the members of an agency established pursuant to Iowa Code chapter 28E.

(1) The terms of the written guarantee must provide that within 30 days of the owner's or operator's failure to perform closure of a facility covered by the guarantee, the guarantor will:

1. Perform, or pay a third party to perform closure as required (performance guarantee);

2. Establish a fully funded secured trust fund as specified in paragraph 105.14(5)"a" in the name of the owner or operator (payment guarantee); or

3. Establish an alternative financial assurance instrument in the name of the owner or operator as required by this rule.

(2) The guarantor must satisfy one of the following requirements:

1. If the guarantor has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, the guarantor must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard & Poor's on all such general obligation bonds; or

2. The guarantor must satisfy each of the following financial ratios based on the guarantor's most recent audited annual financial statement: a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05, and a ratio of annual debt service to total expenditures less than or equal to 0.20.

(3) The guarantor must prepare its financial statements in conformity with Generally Accepted Accounting Principles or Other Comprehensive Bases of Accounting and have its financial statements audited by an independent certified public accountant or the office of the auditor of the state of Iowa. The financial statement shall be in the form prescribed by the office of the auditor of the state of Iowa.

(4) A guarantor is not eligible to assure its obligations if it:

1. Is currently in default on any outstanding general obligation bonds; or

2. Has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard & Poor's; or

3. Operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or

4. Receives an adverse opinion or disclaimer of opinion from the independent certified public accountant or office of the auditor of the state of Iowa auditing its financial statement. A qualified opinion that is related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance of this mechanism.

5. The closure costs to be assured are greater than 43 percent of the guarantor's total annual revenue.

(5) The local government guarantor must include disclosure of the closure costs assured through the guarantee in its next annual audit report prior to the initial receipt of waste at the facility or prior to cancellation of an alternative financial assurance instrument, whichever is later. For the first year the guarantee is used to assure costs at a particular facility, the reference may instead be placed in the guarantor's official files until issuance of the next available annual audit report if timing does not permit the reference to be incorporated into the most recently issued annual audit report

or budget. For closure costs, conformance with Governmental Accounting Standards Board Statement 18 ensures compliance with this public notice component.

(6) The local government owner or operator must submit to the department the following items:

1. A copy of the written guarantee between the owner or operator and the local government serving as guarantor for the closure costs at the facility.

2. A copy of the guarantor's most recent annual financial audit report indicating compliance with the financial ratios required by the second numbered paragraph of subparagraph 105.14(5)"f"(2), if applicable, and the requirements of subparagraphs 105.14(5)"f"(3) and (4).

3. A letter signed by the local government's chief financial officer that lists all the current cost estimates covered by the guarantor, as described in subrule 105.14(4); and provides evidence and certifies that the local government meets the conditions of subparagraphs 105.14(5)"f"(2), (3), (4) and (5).

105.14(6) Financial assurance cancellation and permit suspension.

a. A financial assurance instrument may be terminated by the owner or operator only if the owner or operator substitutes alternate financial assurance prior to cancellation, as specified in this rule or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

b. A financial assurance instrument shall be continuous in nature until canceled by the financial assurance provider or until the department gives written notification to the owner, operator, and financial assurance provider that the covered site has been properly closed. The financial assurance provider shall provide at least 90 days' notice in writing to the owner or operator and the department in the event of any intent to cancel the instrument.

c. Within 60 days of receipt of a written notice of cancellation of financial assurance by the financial assurance provider, the owner or operator must provide the department an alternative financial assurance instrument. If a means of continued financial assurance is not provided within that 60 days, the department shall suspend the permit.

d. The owner or operator shall perform proper closure within 30 days of the permit suspension. For the purpose of this rule, proper closure means completion of all items pursuant to rule 105.13(455B,455D) and subrule 105.14(4).

e. If the owner or operator does not properly close the site within the 30-day period allowed, the department shall file a claim with the financial assurance instrument provider to collect the amount of funds necessary to properly close the site.

f. An owner or operator who elects to terminate a permitted activity, or whose renewal application has been denied, or whose permit has been suspended or revoked for cause, must submit within 30 days of the termination of the permit a schedule for completing proper closure of the terminated activity. Closure completion cannot exceed 60 days from the date of termination of the permit.

g. The director may also request payment from any financial assurance provider to provide for the purpose of completing closure when the following circumstances exist:

(1) The owner or operator is more than 15 days late in providing a schedule for closure or for meeting any date in the schedule for closure.

(2) The owner or operator declares an economic inability to comply with this rule, either by sending written notification to the director or through an action such as, but not limited to, filing for bankruptcy.

ITEM 4. Amend rule 567—106.18(455B) as follows:

567—106.18(455B) Citizen convenience center and transfer station financial assurance. Permitted solid waste citizen convenience centers and transfer stations must obtain and submit a financial assurance instrument to the department for solid waste storage in accordance with this rule. The financial assurance instrument shall provide monetary funds to properly dispose of any solid waste that may remain at a facility due to the owner's or operator's failure to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

106.18(1) No permit without financial assurance. A permit shall not be issued or renewed to the owner or operator of a citizen convenience center or transfer station until a financial assurance instrument has been submitted to and approved by the department.

106.18(2) Proof of compliance. Proof of the establishment of the financial assurance instrument and compliance with this rule, including a current closure cost estimate, shall be submitted to the department within 30 days of the close of the permit holder's first fiscal year that begins after July 17, 2002, or at the time of application for a permit for a new citizen convenience center or transfer station. The owner or operator must provide continuous coverage for closure and submit proof of compliance, including an updated closure cost estimate, with each permit renewal thereafter until released from this requirement by the department.

106.18(3) Use of one financial assurance instrument for multiple permitted activities. Citizen convenience centers and transfer stations required to maintain financial assurance pursuant to any other provisions of 567-Chapters 100 to 123 may satisfy the requirements of this rule by the use of one financial assurance instrument if the permit holder ensures that the instrument provides financial assurance for an amount at least equal to the current cost estimates for closure of all sanitary disposal project activities covered.

106.18(4) Financial assurance amounts required. The estimate submitted to the department must be certified by an Iowa-licensed professional engineer and account for at least the following factors determined by the department to be minimal necessary costs for closure pursuant to rule 106.7(455B) for citizen convenience centers and rule 106.17(455B) for transfer stations, as applicable:

a. Third party labor and transportation costs and total tip fees to properly dispose of all solid waste and litter at the facility equal to twice the maximum storage capacity of the facility. If materials are temporarily stored on site in transportation vehicles or waste receptacles, then this estimate shall include disposal costs for the maximum number of transportation vehicles and waste receptacles that can be on site at any one time.

b. The cost of hiring a third party to properly clean and decontaminate all equipment, storage facilities, holding areas and drainage collection systems. This estimate shall include the cost of properly disposing of a one-week volume

of washwater from the facility. If the facility utilizes washwater storage tanks, then this estimate shall assume that the storage tanks are full and add that volume to the one-week volume.

c. The costs for maintaining financial assurance pursuant to any other provisions of 567-Chapters 100 to 123, if any, in accordance with subrule 106.18(3).

106.18(5) Acceptable financial assurance instruments. The financial assurance instrument shall be established in an amount equal to the cost estimate prepared in accordance with subrule 106.18(4), and shall not be canceled, revoked, disbursed, released, or allowed to terminate without the approval of the department. Financial assurance may be provided by cash in the form of a secured trust fund or local government dedicated fund, surety bond, letter of credit, or corporate or local government guarantee, as follows:

a. Secured trust fund. The owner or operator of a citizen convenience center or transfer station or entity serving as a guarantor may demonstrate financial assurance for closure by establishing a secured trust fund that conforms to the requirements of this paragraph.

(1) The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. The fund shall be restricted for the sole purpose of funding closure activities at the facility and a copy of the trust agreement must be submitted to the department and placed in the facility's official files.

(2) A secured trust fund shall name the department of natural resources as the entity authorized to draw funds from the trust, subject to proper notification to the trust officer of failure by the permittee to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

(3) Money in the fund shall not be assigned for the benefit of creditors with the exception of the state.

(4) Money in the fund shall not be used to pay any final judgment against a permit holder arising out of the ownership or operation of the site during its active life or after closure.

(5) The owner or operator, or other person authorized to conduct closure activities may request reimbursement from the trustee for closure expenditures as they are incurred. Requests for reimbursement shall be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure and if documentation of the justification for reimbursement has been submitted to the department for prior approval.

(6) If the balance of the trust fund exceeds the current cost estimate for closure at any time, the owner or operator may request withdrawal of the excess funds from the trustee so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

b. Local government dedicated fund. The owner or operator of a publicly owned citicen convenience center or transfer station or local government serving as a guarantor may demonstrate financial assurance for closure by establishing a dedicated fund that conforms to the requirements of this paragraph.

(1) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, resolution or order as a restricted fund to pay for closure costs arising from the operation of the facility.

(2) A copy of the document establishing the dedicated fund must be submitted to the department and placed in the facility's official files.

(3) If the balance of the dedicated fund exceeds the current cost estimate for closure at any time, the owner or operator may withdraw excess funds so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

c. Surety bond. A surety bond must be written by a company authorized by the commissioner of insurance to do business in the state, and the surety bond shall comply with the following:

(1) The bond shall be in a form approved by the commissioner of insurance and shall be payable to the department of natural resources.

(2) The bond shall be specific to a particular facility for the purpose of properly disposing of any solid waste that may remain on site due to the owner's or operator's failure to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

(3) The owner or operator shall provide the department with a statement from the surety with each permit application renewal, noting that the bond is paid and current for the permit period for which the owner or operator has applied for renewal.

d. Letter of credit. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency.

(1) The owner or operator must submit to the department a copy of the letter of credit and place a copy in the facility's official files.

(2) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the name and address of the facility, and the amount of funds assured, must be included with the letter of credit submitted to the department and placed in the facility's files.

(3) The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the department 90 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the letter of credit into a secured trust fund that meets the requirements of paragraph 106.18(5)"a." If the owner or operator has not complied with this subrule within the 60-day time period, the issuer of the letter of credit shall deposit a sum equal to the amount of the letter of credit into the secured trust fund established by the owner or operator. The provision of funds by the issuer of the letter of credit shall be considered an issuance of a loan to the owner or operator, and the terms of that loan shall be governed by the letter of credit or subsequent agreement between those parties. The state shall not be considered a party to this credit transaction.

e. Corporate guarantee. An owner or operator may meet the requirements of this rule by obtaining a written guarantee. The guarantor must meet be the direct or higher-tier parent corporation of the owner or operator, an owner or operator whose parent corporation is also the parent corporation of the owner or operator, or an owner or operator with a "substantial business relationship'' with the owner or operator.

(1) The terms of the written guarantee must provide that within 30 days of the owner's or operator's failure to perform closure of a facility covered by the guarantee, the guarantor will:

1. Perform, or pay a third party to perform closure as required (performance guarantee);

2. Establish a fully funded secured trust fund as specified in paragraph 106.18(5)"a" in the name of the owner or operator (payment guarantee); or

3. Establish an alternative financial assurance instrument in the name of the owner or operator as required by this rule.

(2) The guarantor must satisfy one of the following three conditions:

1. A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard & Poor's or Aaa, Aa, A or Baa as issued by Moody's; or

2. A ratio of less than 1.5 comparing total liabilities to net worth; or

3. A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus $10 million, to total liabilities;

(3) The tangible net worth of the guarantor must be greater than the sum of the current closure cost estimate and any other environmental obligations, including other financial assurance guarantees.

(4) The guarantor must have assets amounting to at least the sum of current closure cost estimate and any other environmental obligations, including other financial assurance guarantees.

(5) Record-keeping and reporting requirements. The guarantor must submit the following records to the department and place a copy in the facility's official files:

1. A copy of the written guarantee between the owner or operator and the guarantor;

2. A letter signed by a certified public accountant and based upon a certified audit that:

• Lists all the current cost estimates covered by a guarantee including, but not limited to, cost estimates required by subrule 106.18(4); cost estimates required for municipal solid waste management facilities pursuant to 40 CFR Part 258; cost estimates required for UIC facilities under 40 CFR Part 144, if applicable; cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable; cost estimates required for PCB storage facilities under 40 CFR Part 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable; and

• Provides evidence demonstrating that the guarantor meets the conditions of subparagraphs 106.18(5)"e"(2), (3) and (4).

3. A copy of the independent certified public accountant's unqualified opinion of the guarantor's financial statements for the latest completed fiscal year. To be eligible to use the guarantee, the guarantor's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion or disclaimer of opinion shall be cause for disallowance of this instrument. A qualified opinion related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance. If the department does not allow use of the corporate guarantee, the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

f. Local government guarantee. An owner or operator may demonstrate financial assurance for closure by obtaining a written guarantee provided by a local government or jointly provided by the members of an agency established pursuant to Iowa Code chapter 28E.

(1) The terms of the written guarantee must provide that within 30 days of the owner's or operator's failure to perform closure of a facility covered by the guarantee, the guarantor will:

1. Perform, or pay a third party to perform closure as required (performance guarantee);

2. Establish a fully funded secured trust fund as specified in paragraph 106.18(5)"a" in the name of the owner or operator (payment guarantee); or

3. Establish an alternative financial assurance instrument in the name of the owner or operator as required by this rule.

(2) The guarantor must satisfy one of the following requirements:

1. If the guarantor has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, the guarantor must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard & Poor's on all such general obligation bonds; or

2. The guarantor must satisfy each of the following financial ratios based on the guarantor's most recent audited annual financial statement: a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05, and a ratio of annual debt service to total expenditures less than or equal to 0.20.

(3) The guarantor must prepare its financial statements in conformity with Generally Accepted Accounting Principles or Other Comprehensive Bases of Accounting and have its financial statements audited by an independent certified public accountant or the office of the auditor of the state of Iowa. The financial statement shall be in the form prescribed by the office of the auditor of the state of Iowa.

(4) A guarantor is not eligible to assure its obligations if it:

1. Is currently in default on any outstanding general obligation bonds; or

2. Has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard & Poor's; or

3. Operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or

4. Receives an adverse opinion or disclaimer of opinion from the independent certified public accountant or office of the auditor of the state of Iowa auditing its financial statement. A qualified opinion that is related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance of this mechanism.

5. The closure costs to be assured are greater than 43 percent of the guarantor's total annual revenue.

(5) The local government guarantor must include disclosure of the closure costs assured through the guarantee in its next annual audit report prior to the initial receipt of waste at the facility or prior to cancellation of an alternative financial assurance instrument, whichever is later. For the first year the guarantee is used to assure costs at a particular facility, the reference may instead be placed in the guarantor's official files until issuance of the next available annual audit report if timing does not permit the reference to be incorporated into the most recently issued annual audit report or budget. For closure costs, conformance with Governmental Accounting Standards Board Statement 18 ensures compliance with this public notice component.

(6) The local government owner or operator must submit to the department the following items:

1. A copy of the written guarantee between the owner or operator and the local government serving as guarantor for the closure costs at the facility.

2. A copy of the guarantor's most recent annual financial audit report indicating compliance with the financial ratios required by the second numbered paragraph of subparagraph 106.18(5)"f"(2), if applicable, and the requirements of subparagraphs 106.18(5)"f"(3) and (4).

3. A letter signed by the local government's chief financial officer that lists all the current cost estimates covered by the guarantor, as described in subrule 106.18(4); and provides evidence and certifies that the local government meets the conditions of subparagraphs 106.18(5)"f"(2), (3), (4) and (5).

106.18(6) Financial assurance cancellation and permit suspension.

a. A financial assurance instrument may be terminated by the owner or operator only if the owner or operator substitutes alternate financial assurance prior to cancellation, as specified in this rule or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

b. A financial assurance instrument shall be continuous in nature until canceled by the financial assurance provider or until the department gives written notification to the owner, operator, and financial assurance provider that the covered site has been properly closed. The financial assurance provider shall provide at least 90 days' notice in writing to the owner or operator and the department in the event of any intent to cancel the instrument.

c. Within 60 days of receipt of a written notice of cancellation of financial assurance by the financial assurance provider, the owner or operator must provide the department an alternative financial assurance instrument. If a means of continued financial assurance is not provided within that 60 days, the department shall suspend the permit.

d. The owner or operator shall perform proper closure within 30 days of the permit suspension. For the purpose of this rule, proper closure means completion of all items pursuant to rules 106.7(455B) or 106.17(455B), as applicable, and subrule 106.18(4).

e. If the owner or operator does not properly close the site within the 30-day period allowed, the department shall file a claim with the financial assurance instrument provider to collect the amount of funds necessary to properly close the site.

f. An owner or operator who elects to terminate a permitted activity, or whose renewal application has been denied, or whose permit has been suspended or revoked for cause, must submit within 30 days of the termination of the permit a schedule for completing proper closure of the terminated activity. Closure completion cannot exceed 60 days from the date of termination of the permit.

g. The director may also request payment from any financial assurance provider to provide for the purpose of completing closure when the following circumstances exist:

(1) The owner or operator is more than 15 days late in providing a schedule for closure or for meeting any date in the schedule for closure.

(2) The owner or operator declares an economic inability to comply with this rule, either by sending written notification to the director or through an action such as, but not limited to, filing for bankruptcy.

ITEM 5. Amend 567—Chapter 112 by adopting the following **new** rule:

567—112.31(455B) Biosolids monofill sanitary landfill financial assurance.

112.31(1) Purpose. The purpose of this rule is to implement Iowa Code section 455B.304(8) and Supplement section 455B.306(9) by providing the criteria for establishing financial assurance for closure, postclosure and corrective action at biosolids monofill sanitary landfills (BMF landfills).

112.31(2) Applicability. The requirements of this rule apply to all owners and operators of BMF landfills accepting waste as of [the effective date of this rule] except owners or operators that are state or federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States.

112.31(3) Financial assurance for closure. The owner or operator of a BMF landfill must establish financial assurance for closure in accordance with the criteria in this rule. The owner or operator must provide continuous coverage for closure until released from this requirement by demonstrating compliance with subrules 112.26(13) and 112.13(10). Proof of compliance pursuant to paragraphs 112.31(3)“a” through “e” must be submitted by the owner or operator yearly by April 1 and approved by the department.

a. The owner or operator shall submit the current version of department Form 542–8090, Sanitary Landfill Financial Assurance Report Form, which contains, but is not limited to, the amount of the financial assurance, the annual financial statement required by Iowa Code Supplement sections 455B.306(9)“e” and 455B.306(7)“c,” and the current balances of the closure and postclosure accounts at the time of submittal as required by Iowa Code Supplement section 455B.306(9)“b.”

b. The owner or operator shall submit a copy of the financial assurance instruments or the documents establishing the financial assurance instruments in an amount equal to or greater than the amount specified in subrule 112.31(9). Documentation for the mechanism(s) used to demonstrate financial assurance shall contain, at a minimum, the items required to be submitted as specified in paragraphs 112.31(6)“a” to “i.”

c. The owner or operator shall submit a detailed written estimate, in current dollars, certified by an Iowa–licensed professional engineer, of the cost of hiring a third party to close the BMF landfill in accordance with the closure plan as required by subrules 112.26(13) and 112.13(10). Such estimate must be available at any time during the active life of the landfill.

(1) The cost estimate must equal the cost of closing the BMF landfill at any time during the permitted life of the facility when the extent and manner of its operation would make closure the most expensive.

(2) The costs contained in the third–party estimate for closure must be accurate and reasonable when compared to the cost estimates used by other similarly situated landfills in Iowa.

(3) During the active life of the BMF landfill, the owner or operator must annually adjust the closure cost estimate for inflation.

(4) The owner or operator must, annually or at the time of application for a permit amendment that increases closure costs, whichever occurs first, increase the closure cost estimate and the amount of financial assurance provided if changes to the closure plan or BMF landfill conditions increase the maximum cost of closure at any time during the remaining active life of the facility.

(5) The owner or operator may reduce the amount of financial assurance for closure if the most recent estimate of the maximum cost of closure at any time during the active life of the facility is less than the amount of financial assurance currently provided. Prior to the reduction, the owner or operator must submit to the department the justification for the reduction of the closure cost estimate and the updated documentation required by paragraphs 112.31(3)“a” through “e” and receive department approval for the reduction. Approval or denial shall be issued within 30 days of receipt of the reduction request.

(6) The third–party estimate submitted to the department must include the site area subject to closure and account for at least the following factors determined by the department to be minimal necessary costs for closure:

1. Closure and postclosure plan document revisions;
2. Site preparation, earthwork and final grading;
3. Drainage control culverts, piping and structures;
4. Erosion control structures, sediment ponds and terraces;
5. Final cap construction;
6. Cap vegetation soil placement;
7. Cap seeding, mulching and fertilizing;
8. Monitoring well, piezometer and gas control modifications;

9. Leachate system cleanout and extraction well modifications;

10. Monitoring well installations and abandonments;

11. Facility modifications to effect closed status;

12. Engineering and technical services;

13. Legal, financial and administrative services; and

14. Closure compliance certifications and documentation.

d. For publicly owned BMF landfills, the owner or operator shall submit to the department a copy of the owner's or operator's most recent annual audit report in the form prescribed by the office of the auditor of the state of Iowa.

e. Privately held BMF landfills shall submit an affidavit from the owner or operator indicating that a yearly review has been performed by a certified public accountant to determine whether the privately owned landfill is in compliance with this rule. The affidavit shall state the name of the certified public accountant, the dates and conclusions of the review, and the steps taken to rectify any deficiencies identified by the accountant.

112.31(4) Financial assurance for postclosure. The owner or operator of a BMF landfill must establish financial assurance for the costs of postclosure in accordance with the criteria in this rule. The owner or operator must provide continuous coverage for postclosure until released from this requirement by demonstrating compliance with the postclosure plan and the closure permit. Proof of compliance pursuant to paragraphs 112.31(4)"a" through "e" must be submitted by the owner or operator yearly by April 1 and approved by the department.

a. The owner or operator shall submit the current version of department Form 542–8090, Sanitary Landfill Financial Assurance Report Form, which contains, but is not limited to, the amount of the financial assurance, the annual financial statement required by Iowa Code Supplement sections 455B.306(9)"e" and 455B.306(7)"c," and the current balances of the closure and postclosure accounts required by Iowa Code Supplement section 455B.306(9)"b."

b. The owner or operator shall submit a copy of the documents establishing a financial assurance instrument in an amount equal to or greater than the amount specified in subrule 112.31(9). Documentation for the mechanism(s) used to demonstrate financial assurance shall contain, at a minimum, the items required to be submitted as specified in paragraphs 112.31(6)"a" to "i."

c. The owner or operator shall submit a detailed written estimate, in current dollars, certified by an Iowa–licensed professional engineer, of the cost of hiring a third party to conduct postclosure for the BMF landfill in compliance with the postclosure plan developed pursuant to subrules 112.26(14) and 112.13(10). The cost estimate must account for the total cost of conducting postclosure, as described in the plan, for the entire postclosure period.

(1) The cost estimate for postclosure must be based on the most expensive costs of postclosure during the entire postclosure period.

(2) The costs contained in the third–party estimate of postclosure must be accurate and reasonable when compared to the cost estimates used by other similarly situated landfills in Iowa.

(3) During the active life of the BMF landfill and during the postclosure period, the owner or operator must annually adjust the postclosure cost estimate for inflation.

(4) The owner or operator must, annually or at the time of application for a permit amendment that increases postclosure costs, whichever occurs first, increase the estimate and the amount of financial assurance provided if changes in the postclosure plan or BMF landfill conditions increase the maximum cost of postclosure.

(5) The owner or operator may reduce the amount of financial assurance for postclosure if the most recent estimate of the maximum cost of postclosure beginning at any time during the active life of the facility is less than the amount of financial assurance currently provided. Prior to the reduction, the owner or operator must submit to the department the justification for the reduction of the postclosure cost estimate and the updated documentation required by paragraphs 112.31(4)“a” through “e” and must receive department approval for the reduction. Approval or denial shall be issued within 30 days of receipt of the reduction request.

(6) The third–party estimate submitted to the department must include the site area subject to postclosure and account for at least the following factors determined by the department to be minimal necessary costs for postclosure:

1. General site facilities, access roads and fencing maintenance;
2. Cap and vegetative cover maintenance;
3. Drainage and erosion control systems maintenance;
4. Groundwater to waste separation systems maintenance;
5. Gas control systems maintenance;
6. Gas control systems monitoring and reports;
7. Groundwater and surface water monitoring systems maintenance;
8. Groundwater and surface water quality monitoring and reports;
9. Groundwater monitoring systems performance evaluations and reports;
10. Leachate control systems maintenance;
11. Leachate management, transportation and disposal;
12. Leachate control systems performance evaluations and reports;
13. Facility inspections and reports;
14. Engineering and technical services;
15. Legal, financial and administrative services; and
16. Financial assurance, accounting, audits and reports.

d. For publicly owned BMF landfills, the owner or operator shall submit to the department a copy of the owner’s or operator’s most recent annual audit report in the form prescribed by the office of the auditor of the state of Iowa.

e. Privately held BMF landfills shall submit an affidavit from the owner or operator indicating that a yearly review has been performed by a certified public accountant to determine whether the privately owned landfill is in compliance

with this rule. The affidavit shall state the name of the certified public accountant, the dates and conclusions of the review, and the steps taken to rectify any deficiencies identified by the accountant.

112.31(5) Financial assurance for corrective action.

a. An owner or operator required to undertake corrective action must have a detailed written estimate, in current dollars, prepared by an Iowa–licensed professional engineer, of the cost of hiring a third party to perform the required corrective action. The estimate must account for the total costs of the activities described in the approved corrective action plan for the entire corrective action period. The owner or operator must submit to the department the estimate and financial assurance documentation within 30 days of department approval of the corrective action plan.

(1) The owner or operator must annually adjust the estimate for inflation until the corrective action plan is completed.

(2) The owner or operator must increase the cost estimate and the amount of financial assurance provided if changes in the corrective action plan or BMF landfill conditions increase the maximum cost of corrective action.

(3) The owner or operator may reduce the amount of the cost estimate and the amount of financial assurance provided if the estimate exceeds the maximum remaining costs of the remaining corrective action. The owner or operator must submit to the department the justification for the reduction of the cost estimate and documentation of financial assurance.

b. The owner or operator of a BMF landfill required to undertake a corrective action plan must establish financial assurance for the most recent corrective action plan by one of the mechanisms prescribed in subrule 112.31(6). The owner or operator must provide continuous coverage for corrective action until released from financial assurance requirements by demonstrating compliance with the following:

(1) Upon completion of the remedy, the owner or operator must submit to the department a certification of compliance with the approved corrective action plan. The certification must be signed by the owner or operator and by an Iowa–licensed professional engineer.

(2) Upon department approval of completion of the corrective action remedy, the owner or operator shall be released from the requirements for financial assurance for corrective action.

112.31(6) Allowable financial assurance mechanisms. The mechanisms used to demonstrate financial assurance as required by Iowa Code Supplement section 455B.306(9)“a” must ensure that the funds necessary to meet the costs of closure, postclosure, and corrective action for known releases will be available whenever the funds are needed. Owners or operators must choose from options in paragraphs 112.31(6)“a” to “i.”

a. Trust fund.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action, whichever is applicable, by establishing a trust fund which conforms to the requirements of this subrule. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a

federal or state agency. A copy of the trust agreement must be submitted pursuant to subrules 112.31(3), 112.31(4), and 112.31(5) and placed in the facility's official files.

(2) Payments into the trust fund must be made annually by the owner or operator over ten years or over the remaining life of the BMF landfill, whichever is shorter, in the case of a trust fund for closure or postclosure; or over one–half of the estimated length of the corrective action plan in the case of response to a known release. This period is referred to as the pay–in period.

(3) For a trust fund used to demonstrate financial assurance for closure and postclosure, the first payment into the fund must be at least equal to the amount specified in subrule 112.31(9) for closure or postclosure divided by the number of years in the pay–in period as defined in subparagraph 112.31(6)"a"(2). The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{CE - CB}{Y}$$

where CE is the amount specified in 112.31(9) for closure or postclosure (updated for inflation or other changes), CB is the current balance of the trust fund, and Y is the number of years remaining in the pay–in period.

(4) For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund must be at least equal to one–half of the current cost estimate for corrective action divided by the number of years in the corrective action pay–in period as defined in subparagraph 112.31(6)"a"(2). The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{RB - CV}{Y}$$

where RB is the most recent estimate of the required trust fund balance for corrective action, which is the total cost that will be incurred during the second half of the corrective action period, CV is the current value of the trust fund, and Y is the number of years remaining in the pay–in period.

(5) The initial payment into the trust fund must be made before the initial receipt of waste or within 30 days of close of the first fiscal year that begins after [the effective date of this rule], in the case of existing facilities, or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or no later than 120 days after the corrective action remedy has been approved by the department.

(6) The owner or operator, or other person authorized to conduct closure, postclosure, or corrective action activities, may request reimbursement from the trustee for these expenditures, including partial closure, as the expenditures are incurred. Requests for reimbursement will be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure, postclosure, or corrective action and if justification and documentation of the costs are placed in the operating record. The owner or operator must submit to the department documentation of the justification for reimbursement and verification that reimbursement has been received.

(7) The trust fund may be terminated by the owner or operator only if the owner or operator substitutes alternative financial assurance as specified in this rule or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

(8) After the pay–in period has been completed, the trust fund shall be adjusted annually to correct any deficiency of the fund with respect to the adjusted cost estimate and may be adjusted annually should the balance in the fund exceed the adjusted cost estimate.

b. Surety bond guaranteeing payment or performance.

(1) An owner or operator may demonstrate financial assurance for closure or postclosure by obtaining a payment or performance surety bond which conforms to the requirements of this subrule. An owner or operator may demonstrate financial assurance for corrective action by obtaining a performance bond which conforms to the requirements of this subrule. The bond must be effective before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or no later than 120 days after the corrective action remedy has been approved by the department. The owner or operator must submit a copy of the bond to the department and keep a copy in the facility's official files. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury. The state shall not be considered a party to the surety bond.

(2) The penal sum of the bond must be in an amount at least equal to the amount specified in subrule 112.31(9) for closure and postclosure or corrective action, whichever is applicable.

(3) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond and also upon notice from the department pursuant to subparagraph 112.31(6)"b"(6).

(4) The owner or operator must establish a standby trust fund. The standby trust fund must meet the requirements of paragraph 112.31(6)"a" except the requirements for initial payment and subsequent annual payments specified in subparagraphs 112.31(6)"a"(2) through (5).

(5) Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund. Payments from the trust fund must be approved by the trustee and the department.

(6) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice from the surety of withdrawal of the cancellation, or proof of a deposit into the standby trust fund of a sum equal to the amount of the bond. If the owner or operator has not complied with this subparagraph within the 60–day time period, this shall constitute a failure to perform and the department shall notify the surety, prior to the expiration of the 120–day notice period, that such a failure has occurred.

(7) The bond must be conditioned upon faithful performance by the owner or operator of all closure, postclosure, or corrective action requirements of the Code of Iowa and this rule. A failure to comply with subparagraph 112.31(6)“b”(6) shall also constitute a failure to perform under the terms of the bond.

(8) Liability under the bond shall be for the duration of the operation, closure, and postclosure period.

(9) The owner or operator may cancel the bond only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

c. Letter of credit.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action, whichever is applicable, by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph. The letter of credit must be effective before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or no later than 120 days after the corrective action plan is approved by the department. The owner or operator must submit to the department a copy of the letter of credit and place a copy in the facility’s official files. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter–of–credit operations are regulated and examined by a federal or state agency.

(2) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the name and address of the facility, and the amount of funds assured, must be included with the letter of credit submitted to the department and placed in the facility’s files.

(3) The letter of credit must be irrevocable and issued for a period of at least one year in an amount at least equal to the amount specified in subrule 112.31(9) for closure, postclosure or corrective action, whichever is applicable. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the letter of credit into the closure and postclosure accounts established pursuant to Iowa Code Supplement section 455B.306(9)“b.” If the owner or operator has not complied with this subparagraph within the 60–day time period, the issuer of the letter of credit shall deposit a sum equal to the amount of the letter of credit into the closure and postclosure accounts established by the owner or operator pursuant to Iowa Code Supplement section 455B.306(9)“b.” The provision of funds by the issuer of the letter of credit shall be considered an issuance of a loan to the owner or operator, and the terms of that loan shall be governed by the letter of credit or subsequent agreement between those parties. The state shall not be considered a party to this credit transaction.

(4) The owner or operator may cancel the letter of credit only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

d. Insurance.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action by obtaining insurance which conforms to the requirements of this paragraph. The insurance must be effective before the initial receipt of waste or prior to cancellation of an alternative financial assurance, in the case of closure and postclosure; or no later than 120 days after the corrective action plan has been approved by the department. At a minimum, the insurer must be licensed to transact the business of insurance, or be eligible to provide insurance as an excess or surplus lines insurer, in one or more states. The owner or operator must submit to the department a copy of the insurance policy and retain a copy in the facility's official files.

(2) The closure or postclosure insurance policy must guarantee that funds will be available to close the BMF landfill whenever final closure occurs or to provide postclosure for the BMF landfill whenever the postclosure period begins, whichever is applicable. The policy must also guarantee that once closure or postclosure begins, the insurer will be responsible for the paying out of funds to the owner or operator or other person authorized to conduct closure or postclosure, up to an amount equal to the face amount of the policy.

(3) The insurance policy must be issued for a face amount at least equal to the amount specified in subrule 112.31(9) for closure, postclosure, or corrective action, whichever is applicable. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(4) An owner or operator, or any other person authorized to conduct closure or postclosure, may receive reimbursements for closure or postclosure expenditures, including partial closure, as applicable. Requests for reimbursement will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure or postclosure, and if justification and documentation of the cost are placed in the operating record. The owner or operator must submit to the department documentation of the justification for reimbursement and verification that the reimbursement has been received.

(5) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused.

(6) The insurance policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner or operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice from the insurer of withdrawal of cancellation,

or proof of a deposit of a sum equal to the amount of the insurance coverage into the closure and postclosure accounts established pursuant to Iowa Code Supplement section 455B.306(9)"b." If the owner or operator has not complied with this subparagraph within the 60–day time period, this shall constitute a failure to perform and shall be a covered event pursuant to the terms of the insurance policy. A failure by the owner or operator to comply with this subparagraph within the 60–day period shall make the insurer liable for the closure and postclosure of the covered facility up to the amount of the policy limits, which shall be equal to the most recently submitted cost estimates.

(7) For insurance policies providing coverage for postclosure, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon–issue yield announced by the U.S. Treasury for 26–week treasury securities.

(8) The owner or operator may cancel the insurance only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

e. Corporate financial test. An owner or operator that satisfies the requirements of this paragraph may demonstrate financial assurance up to the amount specified below:

(1) Financial component. The owner or operator must satisfy the requirements of numbered paragraphs 112.31(6)"e"(1)"1," "2" and "3" to meet the financial component of the corporate financial test.

1. The owner or operator must satisfy one of the following three conditions:

- A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard & Poor's or Aaa, Aa, A or Baa as issued by Moody's; or
- A ratio of less than 1.5 comparing total liabilities to net worth (net worth calculations may not include future permitted capacity of the subject landfill as an asset); or
- A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus $10 million, to total liabilities;

2. The tangible net worth, excluding future permitted capacity of the subject landfill, of the owner or operator must be greater than:

- The sum of the current closure, postclosure, and corrective action cost estimates and any other environmental obligations, including guarantees, covered by this financial test plus $10 million except as provided in the second bulleted paragraph in numbered paragraph 112.31(6)"e"(1)"2"; or
- Net worth of $10 million, excluding future permitted capacity of the subject landfill, plus the amount of any guarantees that have not been recognized as liabilities on the financial statements, provided that all of the current closure, postclosure, and corrective action costs and any other environmental obligations covered by a financial test are

recognized as liabilities on the owner's or operator's audited financial statements, and are subject to the approval of the department; and

3. The owner or operator must have, located in the United States, assets, excluding future permitted capacity of the subject landfill, amounting to at least the sum of current closure, postclosure, and corrective action cost estimates and any other environmental obligations covered by a financial test as described in subparagraph 112.31(6)"e"(5).

(2) Record–keeping and reporting requirements. The owner or operator must submit the following records to the department and place a copy in the facility's official files prior to the initial receipt of solid waste or cancellation of an alternative financial assurance instrument, in the case of closure and postclosure; or no later than 120 days after the corrective action plan has been approved by the department:

1. A letter signed by a certified public accountant and based upon a certified audit that:

• Lists all the current cost estimates covered by a financial test including, but not limited to, cost estimates required by subrules 112.31(3) to 112.31(5); cost estimates required for municipal solid waste management facilities pursuant to 40 CFR Part 258; cost estimates required for UIC facilities under 40 CFR Part 144, if applicable; cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable; cost estimates required for PCB storage facilities under 40 CFR Part 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable; and

• Provides evidence demonstrating that the owner or operator meets the conditions of subparagraph 112.31(6)"e"(1).

2. A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion or disclaimer of opinion shall be cause for disallowance of this mechanism. A qualified opinion related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance. If the department does not allow use of the corporate financial test, the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

3. If the certified public accountant's letter providing evidence of financial assurance includes financial data which shows that the owner or operator satisfies subparagraph 112.31(6)"e"(1) but which differs from data in the audited financial statements referred to in numbered paragraph 112.31(6)"e"(2)"2," then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed–upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the certified public accountant's letter derived from the independently audited, year–end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

4. If the certified public accountant's letter provides a demonstration that the owner or operator has assured for environmental obligations as provided in the second bulleted paragraph of numbered paragraph 112.31(6)"e"(2)"1," then the letter shall include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements and that documents how these obligations have been measured and reported, and verifies that the tangible net worth of the owner or operator is at least $10 million plus the amount of any guarantees provided.

(3) The owner or operator may cease the submission of the information required by paragraph 112.31(6)"e" only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

(4) The department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subparagraph 112.31(6)"e"(1), require the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in subparagraph 112.31(6)"e"(2). If the department finds that the owner or operator no longer meets the requirements of subparagraph 112.31(6)"e"(1), the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

(5) Calculation of costs to be assured. When calculating the current cost estimates for closure, postclosure, corrective action, or the sum of the combination of such costs to be covered, and any other environmental obligations assured by a financial test referred to in paragraph 112.31(6)"e," the owner or operator must include cost estimates required for subrules 112.31(3) to 112.31(5); cost estimates for municipal solid waste management facilities pursuant to 40 CFR Section 258.74; and cost estimates required for the following environmental obligations, if the owner or operator assures those environmental obligations through a financial test: obligations associated with UIC facilities under 40 CFR Part 144, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265.

f. Local government financial test. An owner or operator that satisfies the requirements of this paragraph may demonstrate financial assurance up to the amount specified below:

(1) Financial component.

1. The owner or operator must satisfy one of the following requirements:

• If the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, the owner or operator must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard & Poor's, on all such general obligation bonds; or

• The owner or operator must satisfy both of the following financial ratios based on the owner's or operator's most recent audited annual financial statement: a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05, and a ratio of annual debt service to total expenditures less than or equal to 0.20.

2. The owner or operator must prepare its financial statements in conformity with Generally Accepted Accounting Principles or Other Comprehensive Bases of Accounting and have its financial statements audited by an independent certified public accountant or the office of the auditor of the state of Iowa. The financial statement shall be in the form prescribed by the office of the auditor of the state of Iowa.

3. A local government is not eligible to assure its obligations in paragraph 112.31(6)"f" if it:

- Is currently in default on any outstanding general obligation bonds; or
- Has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard & Poor's; or
- Operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or
- Receives an adverse opinion or disclaimer of opinion from the independent certified public accountant or office of the auditor of the state of Iowa auditing its financial statement as required under numbered paragraph 112.31(6)"f"(1)"2." A qualified opinion that is related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance of this mechanism.

4. The following terms used in this paragraph are defined as follows:

- "Cash plus marketable securities" means all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions.
- "Debt service" means the amount of principal and interest due on a loan in a given time period, typically the current year.
- "Deficit" means total annual revenues minus total annual expenditures.
- "Total expenditures" means all expenditures, excluding capital outlays and debt repayment.
- "Total revenues" means revenues from all taxes and fees, excluding revenue from funds managed by local government on behalf of a specific third party, and does not include the proceeds from borrowing or asset sales.

(2) Public notice component. The local government owner or operator must include disclosure of the closure and postclosure costs assured through the financial test in its next annual audit report prior to the initial receipt of waste at the facility or prior to cancellation of an alternative financial assurance mechanism, whichever is later. A reference to corrective action costs must be placed in the next annual audit report after the corrective action plan is approved by the department. For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the facility's official files until issuance of the next available annual audit report if timing does not permit the reference to be incorporated into the most recently issued annual audit report or budget. For closure and postclosure costs, conformance with Governmental Accounting Standards Board Statement 18 ensures compliance with this public notice component.

(3) Record–keeping and reporting requirements.

1. The local government owner or operator must submit to the department the following items:

• A letter signed by the local government's chief financial officer that lists all the current cost estimates covered by a financial test, as described in subparagraph 112.31(6)"f"(4); provides evidence and certifies that the local government meets the conditions of numbered paragraphs 112.31(6)"f"(1)"1," "2," and "3"; and certifies that the local government meets the conditions of subparagraphs 112.31(6)"f"(2) and (4); and

• The local government's annual financial report indicating compliance with the financial ratios required by numbered paragraph 112.31(6)"f"(1)"1," second bulleted paragraph, if applicable, and the requirements of numbered paragraph 112.31(6)"f"(1)"2" and the third and fourth bulleted paragraphs of numbered paragraph 112.31(6)"f"(1)"3"; and also indicating that the requirements of Governmental Accounting Standards Board Statement 18 have been met.

2. The items required in numbered paragraph 112.31(6)"f"(3)"1" must be submitted to the department and placed in the facility's official files prior to the receipt of waste or prior to the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or, in the case of corrective action, not later than 120 days after the corrective action plan is approved by the department.

3. After the initial submission of the required items and their placement in the facility's official files, the local government owner or operator must update the information and place the updated information in the facility's official files within 180 days following the close of the owner's or operator's fiscal year.

4. The owner or operator may cease the submission of the information required by paragraph 112.31(6)"f" only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

5. A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test, the local government must, within 180 days following the close of the owner's or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this rule, place the required submissions for that assurance in the operating record, and notify the department that the owner or operator no longer meets the criteria of the financial test and that alternative financial assurance has been obtained.

6. The department, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial conditions from the local government. If the department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of the local government financial test, the local government must provide alternative financial assurance in accordance with this rule.

(4) Calculation of costs to be assured. The portion of the closure, postclosure, or corrective action costs which an owner or operator may assure under this paragraph is determined as follows:

1. If the local government owner or operator does not assure other environmental obligations through a financial test, the owner or operator may assure closure, postclosure, and corrective action costs that equal up to 43 percent of the local government's total annual revenue.

2. If the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40 CFR Section 144.62, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, the owner or operator must add those costs to the closure, postclosure, and corrective action costs it seeks to assure under this paragraph. The total that may be assured must not exceed 43 percent of the local government's total annual revenue.

3. The owner or operator must obtain an alternative financial assurance instrument for those costs that exceed the limits set in numbered paragraphs 112.31(6)"f"(4)"1" and "2."

g. Corporate guarantee.

(1) An owner or operator may meet the requirements of this paragraph by obtaining a written guarantee. The guarantor must be the direct or higher–tier parent corporation of the owner or operator, an owner or operator whose parent corporation is also the parent corporation of the owner or operator, or an owner or operator with a "substantial business relationship'' with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraph 112.31(6)"~~g~~e" and must comply with the terms of the guarantee. A certified copy of the guarantee must be placed in the facility's operating record along with copies of the letter from a certified public accountant and the accountant's opinions. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter from the certified public accountant must describe the value received in consideration of the guarantee. If the guarantor is an owner or operator with a ''substantial business relationship'' with the owner or operator, this letter must describe this ''substantial business relationship'' and the value received in consideration of the guarantee.

(2) The guarantee must be effective and all required submissions made to the department prior to the initial receipt of waste or before cancellation of an alternative financial mechanism, in the case of closure and postclosure; or, in the case of corrective action, no later than 120 days after the corrective action plan has been approved by the department.

(3) The terms of the guarantee must provide that:

1. If the owner or operator fails to perform closure, postclosure, or corrective action of a facility covered by the guarantee, or fails to obtain alternative financial assurance within 90 days of notice of intent to cancel pursuant to numbered paragraphs 112.31(6)"g"(3)"2" and "3," the guarantor will:

- Perform, or pay a third party to perform, closure, postclosure, or corrective action as required (performance guarantee); or
- Establish a fully funded trust fund as specified in paragraph 112.31(6)"a" in the name of the owner or operator (payment guarantee); or
- Obtain alternative financial assurance as required by numbered paragraph 112.31(6)"g"(3)"3."

2. The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements of this rule unless the guarantor sends prior notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the 120 days beginning on the date of

receipt of the notice of cancellation by both the owner or operator and the department, as evidenced by the return receipts.

3. If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the department, provide to the department adequate proof of alternative financial assurance, notice from the guarantor of withdrawal of the cancellation, or proof of the establishment of a fully funded trust fund pursuant to paragraph 112.31(6)"a." If the owner or operator fails to comply with the provisions of this numbered paragraph within the 90–day period, the guarantor must provide that alternative financial assurance prior to cancellation of the corporate guarantee.

(4) If a corporate guarantor no longer meets the requirements of paragraph 112.31(6)"e," the owner or operator must, within 90 days, obtain alternative financial assurance and submit proof of alternative financial assurance to the department. If the owner or operator fails to provide alternative financial assurance within the 90–day period, the guarantor must provide that alternative financial assurance within the next 30 days.

(5) The owner or operator is no longer required to meet the requirements of paragraph 112.31(6)"g" upon the submission to the department of proof of the substitution of alternative financial assurance or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

h. Local government guarantee. An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action by obtaining a written guarantee provided by a local government or jointly provided by the members of an agency established pursuant to Iowa Code chapter 28E. The guarantor must meet the requirements of the local government financial test in paragraph 112.31(6)"f" and must comply with the terms of a written guarantee.

(1) Terms of the written guarantee. The guarantee must be effective before the initial receipt of waste or before the cancellation of alternative financial assurance, in the case of closure and postclosure; or no later than 120 days after the corrective action plan is approved by the department. The guarantee must provide that:

1. If the owner or operator fails to perform closure, postclosure, or corrective action of a facility covered by the guarantee or fails to obtain alternative financial assurance within 90 days of notice of intent to cancel pursuant to numbered paragraphs 112.31(6)"h"(1)"2" and "3," the guarantor will:

- Perform, or pay a third party to perform, closure, postclosure, or corrective action as required; or
- Establish a fully funded trust fund as specified in paragraph 112.31(6)"a" in the name of the owner or operator; or
- Obtain alternative financial assurance as required by numbered paragraph 112.31(6)"h"(1)"3."

2. The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the department as evidenced by the return receipts.

3. If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the department, provide to the department adequate proof of alternative financial assurance, notice from the guarantor of withdrawal of the cancellation, or proof of the establishment of a fully funded trust fund pursuant to paragraph 112.31(6)“a.” If the owner or operator fails to comply with the provisions of this numbered paragraph within the 90–day period, the guarantor must provide that alternative financial assurance prior to cancellation of the guarantee.

(2) Record–keeping and reporting requirements.

1. The owner or operator must submit to the department a certified copy of the guarantee along with the items required under subparagraph 112.31(6)“f”(3) and place a copy in the facility’s official files before the initial receipt of waste or before cancellation of alternative financial assurance, whichever is later, in the case of closure and postclosure; or no later than 120 days after the corrective action plan has been approved by the department.

2. The owner or operator shall no longer be required to submit the items specified in numbered paragraph 112.31(6)“h”(2)“1” when proof of alternative financial assurance has been submitted to the department or the owner or operator is no longer required to provide financial assurance pursuant to this rule.

3. If a local government guarantor no longer meets the requirements of paragraph 112.31(6)“f,” the owner or operator must, within 90 days, submit to the department proof of alternative financial assurance. If the owner or operator fails to obtain alternative financial assurance within the 90–day period, the guarantor must provide that alternative financial assurance within the next 30 days.

i. Local government dedicated fund. The owner or operator of a publicly owned BMF landfill or local government serving as a guarantor may demonstrate financial assurance for closure, postclosure, or corrective action, whichever is applicable, by establishing a dedicated fund or account that conforms to the requirements of this paragraph. A dedicated fund will be considered eligible if it complies with subparagraph 112.31(6)“i”(1) or (2), and all other provisions of this paragraph, and documentation of this compliance has been submitted to the department.

(1) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, or order to pay for closure, postclosure, or corrective action costs arising from the operation of the BMF landfill and shall be funded for the full amount of coverage or funded for part of the required amount of coverage and used in combination with another mechanism(s) that provides the remaining coverage.

(2) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, or order as a reserve fund and shall be funded for no less than the full amount of coverage or funded for part of the required amount of coverage and used in combination with another mechanism(s) that provides the remaining coverage.

(3) Payments into the dedicated fund must be made annually by the owner or operator for ten years or over the permitted life of the BMF landfill, whichever is shorter, in the case of a dedicated fund for closure or postclosure; or over one–half of the estimated length of an approved corrective action plan in the case of a response to a known release. This is referred to as the pay–in period. The initial payment into the dedicated fund must be made before the initial

receipt of waste in the case of closure and postclosure or no later than 120 days after the corrective action plan has been approved by the department.

(4) For a dedicated fund used to demonstrate financial assurance for closure and postclosure, the first payment into the fund must be at least equal to the amount specified in subrule 112.31(9), divided by the number of years in the pay–in period as defined in paragraph 112.31(6)"i." The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{CE - CB}{Y}$$

where CE is the total required financial assurance for the owner or operator, CB is the current balance of the fund, and Y is the number of years remaining in the pay–in period.

(5) For a dedicated fund used to demonstrate financial assurance for corrective action, the first payment into the dedicated fund must be at least one–half of the current cost estimate, divided by the number of years in the corrective action pay–in period as defined in 112.31(6)"i." The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{RB - CF}{Y}$$

where RB is the most recent estimate of the required dedicated fund balance, which is the total cost that will be incurred during the second half of the corrective action period, CF is the current amount in the dedicated fund, and Y is the number of years remaining in the pay–in period.

(6) The initial payment into the dedicated fund must be made before the initial receipt of waste or within 30 days of close of the first fiscal year that begins after [the effective date of this rule], in the case of existing facilities, or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or no later than 120 days after the corrective action remedy has been approved by the department.

(7) After the pay–in period has been completed, the dedicated fund shall be adjusted annually to correct any deficiency of the fund with respect to the adjusted cost estimates and may be adjusted annually should the balance in the fund exceed the adjusted cost estimate.

112.31(7) General requirements.

a. Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this rule by establishing more than one financial mechanism per facility. The mechanisms must be a combination of those mechanisms outlined in this rule and must provide financial assurance for an amount at least equal to the current cost estimate for closure, postclosure, or corrective action, whichever is applicable. The financial test and a guarantee provided by a corporate parent, sibling or grandparent may not be combined if the financial statements of the two entities are consolidated.

b. Use of one mechanism for multiple facilities. An owner or operator may satisfy the requirements of this rule for multiple BMF landfills by the use of one mechanism if the owner or operator ensures that the mechanism provides

financial assurance for an amount at least equal to the current cost estimates for closure, postclosure, or corrective action, whichever is applicable, for all BMF landfills covered.

c. Criteria. The language of the financial assurance mechanisms listed in this rule must ensure that the instruments satisfy the following criteria:

(1) The financial assurance mechanisms must ensure that the amount of funds assured is sufficient to cover the costs of closure, postclosure, or corrective action for known releases, whichever is applicable;

(2) The financial assurance mechanisms must ensure that funds will be available in a timely fashion when needed;

(3) The financial assurance mechanisms must be obtained by the owner or operator prior to the initial receipt of solid waste and no later than 120 days after the corrective action remedy has been approved by the department until the owner or operator is released from the financial assurance requirements; and

(4) The financial assurance mechanisms must be legally valid, binding, and enforceable under Iowa law.

d. No permit shall be issued by the department pursuant to Iowa Code Supplement section 455B.305 unless the applicant has demonstrated compliance with rule 567—112.31(455B).

112.31(8) Closure and postclosure accounts. The holder of a permit for a BMF landfill shall maintain a separate account for closure and postclosure as required by Iowa Code Supplement section 455B.306(9)"b." The account shall be specific to a particular facility.

a. Definitions. For the purpose of this subrule, the following definitions shall apply:

"Account" means a formal separate set of records.

"Current balance" means cash in an account established pursuant to this subrule plus the current value of investments of moneys collected pursuant to subrule 112.31(8) and used to purchase one or more of the investments listed at Iowa Code section 12B.10(5).

"Current cost estimate" means the closure cost estimate prepared and submitted to the department pursuant to subrule 112.31(3) and the postclosure cost estimate prepared and submitted pursuant to subrule 112.31(4).

b. Moneys in the accounts shall not be assigned for the benefit of creditors except the state of Iowa.

c. Moneys in the accounts shall not be used to pay any final judgment against a permit holder arising out of the ownership or operation of the site during its active life or after closure.

d. Withdrawal of funds. Except as provided in paragraph 112.31(8)"e," moneys in the accounts may be withdrawn without department approval only for the purpose of funding closure, including partial closure, or postclosure activities that are in conformance with a closure/postclosure plan which has been submitted pursuant to subrule 112.13(10). Withdrawals for activities not in conformance with a closure/postclosure plan must receive prior written approval from the department. Permit holders using a trust fund established pursuant to paragraph 112.31(6)"a" to satisfy the requirements of this rule must comply with the requirements of subparagraph 112.31(6)"a"(6) prior to withdrawal.

e. Excess funds. If the balance of a closure or postclosure account exceeds the current cost estimate for closure or postclosure at any time, the permit holder may withdraw the excess funds so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

f. Initial proof of establishment of account. A permit holder shall submit a statement of account, signed by the permit holder, to the department by April 1, 2008, that indicates that accounts have been established pursuant to this subrule. Permit holders for new BMF landfills permitted after April 1, 2008, shall submit to the department, prior to the landfill's initial receipt of waste a statement of account, signed by the permit holder.

g. An account established pursuant to paragraph 112.31(6)"a" for trust funds or paragraph 112.31(6)"i" for local government dedicated funds also satisfies the requirements of this subrule, and the permit holder shall not be required to establish closure and postclosure accounts in addition to said financial assurance accounts.

Accounts established pursuant to paragraph 112.31(6)"a" or 112.31(6)"i," which are intended to satisfy the requirements of this subrule, must comply with Iowa Code Supplement section 455B.306(9)"b."

h. Yearly deposits. Deposits into the closure and postclosure accounts shall be made at least yearly in the amounts specified in this subrule beginning with the close of the facility's first fiscal year that begins after [the effective date of this rule]. The deposits shall be made within 30 days of the close of each fiscal year. The minimum yearly deposit to the closure and postclosure accounts shall be determined using the following formula:

$$\frac{CE - CB}{RPC} \times TR = \text{yearly deposit to account}$$

Where:

"CE" means the current cost estimate of closure and postclosure costs.

"CB" means the current balance of the closure or postclosure accounts.

"RPC" means the remaining permitted capacity, in tons, of the landfill as of the start of the permit holder's fiscal year.

"TR" is the number of tons of solid waste disposed of at the facility in the prior year.

i. Closure and postclosure accounts may be commingled with other accounts so long as the amounts credited to each account balance are reported separately pursuant to paragraphs 112.31(3)"a" and 112.31(4)"a."

j. The department shall have full rights of access to all funds existing in a facility's closure or postclosure account, at the sole discretion of the department, if the permit holder fails to undertake closure or postclosure activities after being directed to do so by a final agency action of the department. These funds shall be used only for the purposes of funding closure and postclosure activities at the site.

112.31(9) Amount of required financial assurance. A financial assurance mechanism established pursuant to subrule 112.31(6) shall be in the amount of the third–party cost estimates required by subrules 112.31(3), 112.31(4), and 112.31(5) except that the amount of the financial assurance may be reduced by the sum of the cash balance in a trust fund or local government dedicated fund established to comply with subrule 112.31(8) plus the current value of

investments held by said trust fund or local government dedicated fund if invested in one or more of the investments listed in Iowa Code section 12B.10(5).

ITEM 6. Amend 567—Chapter 114 by adopting the following **new** rule:

567—114.31(455B) Construction and demolition wastes sanitary landfill financial assurance.

114.31(1) Purpose. The purpose of this rule is to implement Iowa Code section 455B.304(8) and Supplement section 455B.306(9) by providing the criteria for establishing financial assurance for closure, postclosure and corrective action at construction and demolition wastes sanitary landfills (CND landfills).

114.31(2) Applicability. The requirements of this rule apply to all owners and operators of CND landfills accepting waste as of [the effective date of this rule] except owners or operators that are state or federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States.

114.31(3) Financial assurance for closure. The owner or operator of a CND landfill must establish financial assurance for closure in accordance with the criteria in this rule. The owner or operator must provide continuous coverage for closure until released from this requirement by demonstrating compliance with subrules 114.26(13) and 114.13(10). Proof of compliance pursuant to paragraphs 114.31(3)"a" through "e" must be submitted by the owner or operator yearly by April 1 and approved by the department.

a. The owner or operator shall submit the current version of department Form 542–8090, Sanitary Landfill Financial Assurance Report Form, which contains, but is not limited to, the amount of the financial assurance, the annual financial statement required by Iowa Code Supplement sections 455B.306(9)"e" and 455B.306(7)"c," and the current balances of the closure and postclosure accounts at the time of submittal as required by Iowa Code Supplement section 455B.306(9)"b."

b. The owner or operator shall submit a copy of the financial assurance instruments or the documents establishing the financial assurance instruments in an amount equal to or greater than the amount specified in subrule 114.31(9). Documentation for the mechanism(s) used to demonstrate financial assurance shall contain, at a minimum, the items required to be submitted as specified in paragraphs 114.31(6)"a" to "i."

c. The owner or operator shall submit a detailed written estimate, in current dollars, certified by an Iowa–licensed professional engineer, of the cost of hiring a third party to close the CND landfill in accordance with the closure plan as required by subrules 114.26(13) and 114.13(10). Such estimate must be available at any time during the active life of the landfill.

(1) The cost estimate must equal the cost of closing the CND landfill at any time during the permitted life of the facility when the extent and manner of its operation would make closure the most expensive.

(2) The costs contained in the third–party estimate for closure must be accurate and reasonable when compared to the cost estimates used by other similarly situated landfills in Iowa.

(3) During the active life of the landfill, the owner or operator must annually adjust the closure cost estimate for inflation.

(4) The owner or operator must, annually or at the time of application for a permit amendment that increases closure costs, whichever occurs first, increase the closure cost estimate and the amount of financial assurance provided if changes to the closure plan or CND landfill conditions increase the maximum cost of closure at any time during the remaining active life of the facility.

(5) The owner or operator may reduce the amount of financial assurance for closure if the most recent estimate of the maximum cost of closure at any time during the active life of the facility is less than the amount of financial assurance currently provided. Prior to the reduction, the owner or operator must submit to the department the justification for the reduction of the closure cost estimate and the updated documentation required by paragraphs 114.31(3)"a" through "e" and receive department approval for the reduction. Approval or denial shall be issued within 30 days of receipt of the reduction request.

(6) The third–party estimate submitted to the department must include the site area subject to closure and account for at least the following factors determined by the department to be minimal necessary costs for closure:

1. Closure and postclosure plan document revisions;
2. Site preparation, earthwork and final grading;
3. Drainage control culverts, piping and structures;
4. Erosion control structures, sediment ponds and terraces;
5. Final cap construction;
6. Cap vegetation soil placement;
7. Cap seeding, mulching and fertilizing;
8. Monitoring well, piezometer and gas control modifications;
9. Leachate system cleanout and extraction well modifications;
10. Monitoring well installations and abandonments;
11. Facility modifications to effect closed status;
12. Engineering and technical services;
13. Legal, financial and administrative services; and
14. Closure compliance certifications and documentation.

d. For publicly owned CND landfills, the owner or operator shall submit to the department a copy of the owner's or operator's most recent annual audit report in the form prescribed by the office of the auditor of the state of Iowa.

e. Privately held CND landfills shall submit an affidavit from the owner or operator indicating that a yearly review has been performed by a certified public accountant to determine whether the privately owned landfill is in compliance with this rule. The affidavit shall state the name of the certified public accountant, the dates and conclusions of the review, and the steps taken to rectify any deficiencies identified by the accountant.

114.31(4) Financial assurance for postclosure. The owner or operator of a CND landfill must establish financial assurance for the costs of postclosure in accordance with the criteria in this rule. The owner or operator must provide

continuous coverage for postclosure until released from this requirement by demonstrating compliance with the postclosure plan and the closure permit. Proof of compliance pursuant to paragraphs 114.31(4)“a” through “e” must be submitted by the owner or operator yearly by April 1 and approved by the department.

a. The owner or operator shall submit the current version of department Form 542–8090, Sanitary Landfill Financial Assurance Report Form, which contains, but is not limited to, the amount of the financial assurance, the annual financial statement required by Iowa Code Supplement sections 455B.306(9)“e” and 455B.306(7)“c,” and the current balances of the closure and postclosure accounts required by Iowa Code Supplement section 455B.306(9)“b.”

b. The owner or operator shall submit a copy of the documents establishing a financial assurance instrument in an amount equal to or greater than the amount specified in subrule 114.31(9). Documentation for the mechanism(s) used to demonstrate financial assurance shall contain, at a minimum, the items required to be submitted as specified in paragraphs 114.31(6)“a” to “i.”

c. The owner or operator shall submit a detailed written estimate, in current dollars, certified by an Iowa–licensed professional engineer, of the cost of hiring a third party to conduct postclosure for the CND landfill in compliance with the postclosure plan developed pursuant to subrules 114.26(14) and 114.13(10). The cost estimate must account for the total cost of conducting postclosure, as described in the plan, for the entire postclosure period.

(1) The cost estimate for postclosure must be based on the most expensive costs during the entire postclosure period.

(2) The costs contained in the third–party estimate for postclosure must be accurate and reasonable when compared to the cost estimates used by other similarly situated landfills in Iowa.

(3) During the active life of the CND landfill and during the postclosure period, the owner or operator must annually adjust the postclosure cost estimate for inflation.

(4) The owner or operator must, annually or at the time of application for a permit amendment that increases postclosure costs, whichever occurs first, increase the estimate and the amount of financial assurance provided if changes in the postclosure plan or CND landfill conditions increase the maximum cost of postclosure.

(5) The owner or operator may reduce the amount of financial assurance for postclosure if the most recent estimate of the maximum cost of postclosure beginning at any time during the active life of the facility is less than the amount of financial assurance currently provided. Prior to the reduction, the owner or operator must submit to the department the justification for the reduction of the postclosure cost estimate and the updated documentation required by paragraphs 114.31(4)“a” through “e” and must receive department approval for the reduction. Approval or denial shall be issued within 30 days of receipt of the reduction request.

(6) The third–party estimate submitted to the department must include the site area subject to postclosure and account for at least the following factors determined by the department to be minimal necessary costs for postclosure:

1. General site facilities, access roads and fencing maintenance;
2. Cap and vegetative cover maintenance;
3. Drainage and erosion control systems maintenance;

4. Groundwater to waste separation systems maintenance;

5. Gas control systems maintenance;

6. Gas control systems monitoring and reports;

7. Groundwater and surface water monitoring systems maintenance;

8. Groundwater and surface water quality monitoring and reports;

9. Groundwater monitoring systems performance evaluations and reports;

10. Leachate control systems maintenance;

11. Leachate management, transportation and disposal;

12. Leachate control systems performance evaluations and reports;

13. Facility inspections and reports;

14. Engineering and technical services;

15. Legal, financial and administrative services; and

16. Financial assurance, accounting, audits and reports.

d. For publicly owned CND landfills, the owner or operator shall submit to the department a copy of the owner's or operator's most recent annual audit report in the form prescribed by the office of the auditor of the state of Iowa.

e. Privately held CND landfills shall submit an affidavit from the owner or operator indicating that a yearly review has been performed by a certified public accountant to determine whether the privately owned landfill is in compliance with this rule. The affidavit shall state the name of the certified public accountant, the dates and conclusions of the review, and the steps taken to rectify any deficiencies identified by the accountant.

114.31(5) Financial assurance for corrective action.

a. An owner or operator required to undertake corrective action pursuant to subrules 114.26(4) through 114.26(9), inclusive, must have a detailed written estimate prepared by an Iowa–licensed professional engineer, in current dollars, of the cost of hiring a third party to perform the required corrective action. The estimate must account for the total costs of the activities described in the approved corrective action plan for the entire corrective action period. The owner or operator must submit to the department the estimate and financial assurance documentation within 30 days of department approval of the corrective action plan.

(1) The owner or operator must annually adjust the estimate for inflation until the corrective action plan is completed.

(2) The owner or operator must increase the cost estimate and the amount of financial assurance provided if changes in the corrective action plan or CND landfill conditions increase the maximum cost of corrective action.

(3) The owner or operator may reduce the amount of the cost estimate and the amount of financial assurance provided if the estimate exceeds the maximum remaining costs of the remaining corrective action. The owner or operator must submit to the department the justification for the reduction of the cost estimate and documentation of financial assurance.

b. The owner or operator of a CND landfill required to undertake a corrective action plan must establish financial assurance for the most recent corrective action plan by one of the mechanisms prescribed in subrule 114.31(6). The owner or operator must provide continuous coverage for corrective action until released from financial assurance requirements by demonstrating compliance with the following:

(1) Upon completion of the remedy, the owner or operator must submit to the department a certification of compliance with the approved corrective action plan. The certification must be signed by the owner or operator and by an Iowa–licensed professional engineer.

(2) Upon department approval of completion of the corrective action remedy, the owner or operator shall be released from the requirements for financial assurance for corrective action.

114.31(6) Allowable financial assurance mechanisms. The mechanisms used to demonstrate financial assurance as required by Iowa Code Supplement section 455B.306(9)"a" must ensure that the funds necessary to meet the costs of closure, postclosure, and corrective action for known releases will be available whenever the funds are needed. Owners or operators must choose from options in paragraphs 114.31(6)"a" to "i."

a. Trust fund.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action, whichever is applicable, by establishing a trust fund which conforms to the requirements of this subrule. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. A copy of the trust agreement must be submitted pursuant to subrules 114.31(3), 114.31(4), and 114.31(5) and placed in the facility's official files.

(2) Payments into the trust fund must be made annually by the owner or operator over ten years or over the remaining life of the CND landfill, whichever is shorter, in the case of a trust fund for closure or postclosure; or over one–half of the estimated length of the corrective action plan in the case of response to a known release. This period is referred to as the pay–in period.

(3) For a trust fund used to demonstrate financial assurance for closure and postclosure, the first payment into the fund must be at least equal to the amount specified in subrule 114.31(9) for closure or postclosure divided by the number of years in the pay–in period as defined in subparagraph 114.31(6)"a"(2). The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{CE - CB}{Y}$$

where CE is the amount specified in subrule 114.31(9) for closure or postclosure (updated for inflation or other changes), CB is the current balance of the trust fund, and Y is the number of years remaining in the pay–in period.

(4) For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund must be at least equal to one–half of the current cost estimate for corrective action divided by the number of years in the

corrective action pay–in period as defined in subparagraph 114.31(6)“a”(2). The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{RB - CV}{Y}$$

where RB is the most recent estimate of the required trust fund balance for corrective action, which is the total cost that will be incurred during the second half of the corrective action period, CV is the current value of the trust fund, and Y is the number of years remaining in the pay–in period.

(5) The initial payment into the trust fund must be made before the initial receipt of waste or within 30 days of close of the first fiscal year that begins after [the effective date of this rule], in the case of existing facilities, or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or no later than 120 days after the corrective action remedy has been approved by the department.

(6) The owner or operator, or other person authorized to conduct closure, postclosure, or corrective action activities, may request reimbursement from the trustee for these expenditures, including partial closure, as the expenditures are incurred. Requests for reimbursement will be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure, postclosure, or corrective action and if justification and documentation of the costs are placed in the operating record. The owner or operator must submit to the department documentation of the justification for reimbursement and verification that reimbursement has been received.

(7) The trust fund may be terminated by the owner or operator only if the owner or operator substitutes alternative financial assurance as specified in this rule or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

(8) After the pay–in period has been completed, the trust fund shall be adjusted annually to correct any deficiency of the fund with respect to the adjusted cost estimate and may be adjusted annually should the balance in the fund exceed the adjusted cost estimate.

b. Surety bond guaranteeing payment or performance.

(1) An owner or operator may demonstrate financial assurance for closure or postclosure by obtaining a payment or performance surety bond which conforms to the requirements of this subrule. An owner or operator may demonstrate financial assurance for corrective action by obtaining a performance bond which conforms to the requirements of this subrule. The bond must be effective before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or no later than 120 days after the corrective action remedy has been approved by the department. The owner or operator must submit a copy of the bond to the department and keep a copy in the facility’s official files. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury. The state shall not be considered a party to the surety bond.

(2) The penal sum of the bond must be in an amount at least equal to the amount specified in subrule 114.31(9) for closure and postclosure or corrective action, whichever is applicable.

(3) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond and also upon notice from the department pursuant to subparagraph 114.31(6)"b"(6).

(4) The owner or operator must establish a standby trust fund. The standby trust fund must meet the requirements of paragraph 114.31(6)"a" except the requirements for initial payment and subsequent annual payments specified in subparagraphs 114.31(6)"a"(2) through (5).

(5) Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund. Payments from the trust fund must be approved by the trustee and the department.

(6) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice from the surety of withdrawal of the cancellation, or proof of a deposit into the standby trust fund of a sum equal to the amount of the bond. If the owner or operator has not complied with this subparagraph within the 60–day time period, this shall constitute a failure to perform and the department shall notify the surety, prior to the expiration of the 120–day notice period, that such a failure has occurred.

(7) The bond must be conditioned upon faithful performance by the owner or operator of all closure, postclosure, or corrective action requirements of the Code of Iowa and this rule. A failure to comply with subparagraph 114.31(6)"b"(6) shall also constitute a failure to perform under the terms of the bond.

(8) Liability under the bond shall be for the duration of the operation, closure, and postclosure period.

(9) The owner or operator may cancel the bond only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

c. Letter of credit.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action, whichever is applicable, by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph. The letter of credit must be effective before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or no later than 120 days after the corrective action plan is approved by the department. The owner or operator must submit to the department a copy of the letter of credit and place a copy in the facility's official files. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter–of–credit operations are regulated and examined by a federal or state agency.

(2) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the name and address of the facility, and the amount of funds assured, must be included with the letter of credit submitted to the department and placed in the facility's files.

(3) The letter of credit must be irrevocable and issued for a period of at least one year in an amount at least equal to the amount specified in subrule 114.31(9) for closure, postclosure or corrective action, whichever is applicable. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the letter of credit into the closure and postclosure accounts established pursuant to Iowa Code Supplement section 455B.306(9)"b." If the owner or operator has not complied with this subparagraph within the 60–day time period, the issuer of the letter of credit shall deposit a sum equal to the amount of the letter of credit into the closure and postclosure accounts established by the owner or operator pursuant to Iowa Code Supplement section 455B.306(9)"b." The provision of funds by the issuer of the letter of credit shall be considered an issuance of a loan to the owner or operator, and the terms of that loan shall be governed by the letter of credit or subsequent agreement between those parties. The state shall not be considered a party to this credit transaction.

(4) The owner or operator may cancel the letter of credit only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

d. Insurance.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action by obtaining insurance which conforms to the requirements of this paragraph. The insurance must be effective before the initial receipt of waste or prior to cancellation of an alternative financial assurance, in the case of closure and postclosure; or no later than 120 days after the corrective action plan has been approved by the department. At a minimum, the insurer must be licensed to transact the business of insurance, or be eligible to provide insurance as an excess or surplus lines insurer, in one or more states. The owner or operator must submit to the department a copy of the insurance policy and retain a copy in the facility's official files.

(2) The closure or postclosure insurance policy must guarantee that funds will be available to close the CND landfill whenever final closure occurs or to provide postclosure for the CND landfill whenever the postclosure period begins, whichever is applicable. The policy must also guarantee that once closure or postclosure begins, the insurer will be responsible for the paying out of funds to the owner or operator or other person authorized to conduct closure or postclosure, up to an amount equal to the face amount of the policy.

(3) The insurance policy must be issued for a face amount at least equal to the amount specified in subrule 114.31(9) for closure, postclosure, or corrective action, whichever is applicable. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(4) An owner or operator, or any other person authorized to conduct closure or postclosure, may receive reimbursements for closure or postclosure expenditures, including partial closure, as applicable. Requests for reimbursement will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure or postclosure, and if justification and documentation of the cost are placed in the operating record. The owner or operator must submit to the department documentation of the justification for reimbursement and verification that the reimbursement has been received.

(5) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused.

(6) The insurance policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner or operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice from the insurer of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the insurance coverage into the closure and postclosure accounts established pursuant to Iowa Code Supplement section 455B.306(9)"b." If the owner or operator has not complied with this subparagraph within the 60–day time period, this shall constitute a failure to perform and shall be a covered event pursuant to the terms of the insurance policy. A failure by the owner or operator to comply with this subparagraph within the 60–day period shall make the insurer liable for the closure and postclosure of the covered facility up to the amount of the policy limits, which shall be equal to the most recently submitted cost estimates.

(7) For insurance policies providing coverage for postclosure, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon–issue yield announced by the U.S. Treasury for 26–week treasury securities.

(8) The owner or operator may cancel the insurance only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

e. Corporate financial test. An owner or operator that satisfies the requirements of this paragraph may demonstrate financial assurance up to the amount specified below:

(1) Financial component. The owner or operator must satisfy the requirements of numbered paragraphs 114.31(6)“e”(1)“1,” “2,” and “3,” to meet the financial component of the corporate financial test.

1. The owner or operator must satisfy one of the following three conditions:

• A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard & Poor’s or Aaa, Aa, A or Baa as issued by Moody’s; or

• A ratio of less than 1.5 comparing total liabilities to net worth (net worth calculations may not include future permitted capacity of the subject landfill as an asset); or

• A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus $10 million, to total liabilities;

2. The tangible net worth, excluding future permitted capacity of the subject landfill, of the owner or operator must be greater than:

• The sum of the current closure, postclosure, and corrective action cost estimates and any other environmental obligations, including guarantees, covered by this financial test plus $10 million except as provided in the second bulleted paragraph of numbered paragraph 114.31(6)“e”(1)“2”; or

• Net worth of $10 million, excluding future permitted capacity of the subject landfill, plus the amount of any guarantees that have not been recognized as liabilities on the financial statements, provided that all of the current closure, postclosure, and corrective action costs and any other environmental obligations covered by a financial test are recognized as liabilities on the owner’s or operator’s audited financial statements, and subject to the approval of the department; and

3. The owner or operator must have, located in the United States, assets, excluding future permitted capacity of the subject landfill, amounting to at least the sum of current closure, postclosure, and corrective action cost estimates and any other environmental obligations covered by a financial test as described in subparagraph 114.31(6)“e”(5).

(2) Record–keeping and reporting requirements. The owner or operator must submit the following records to the department and place a copy in the facility’s official files prior to the initial receipt of solid waste or cancellation of an alternative financial assurance instrument, in the case of closure and postclosure; or no later than 120 days after the corrective action plan has been approved by the department:

1. A letter signed by a certified public accountant and based upon a certified audit that:

• Lists all the current cost estimates covered by a financial test including, but not limited to, cost estimates required by subrules 114.31(3) to 114.31(5); cost estimates required for municipal solid waste management facilities pursuant to 40 CFR Part 258; cost estimates required for UIC facilities under 40 CFR Part 144, if applicable; cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable; cost estimates required for PCB storage facilities under 40 CFR Part 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable; and

• Provides evidence demonstrating that the owner or operator meets the conditions of subparagraph 114.31(6)“e”(1).

2. A copy of the independent certified public accountant’s unqualified opinion of the owner’s or operator’s financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner’s or operator’s financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion or disclaimer of opinion shall be cause for disallowance of this mechanism. A qualified opinion related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance. If the department does not allow use of the corporate financial test, the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

3. If the certified public accountant’s letter providing evidence of financial assurance includes financial data which shows that the owner or operator satisfies subparagraph 114.31(6)“e”(1) but which differs from data in the audited financial statements referred to in numbered paragraph 114.31(6)“e”(2)“2,” then a special report from the owner’s or operator’s independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed–upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the certified public accountant’s letter derived from the independently audited, year–end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

4. If the certified public accountant’s letter provides a demonstration that the owner or operator has assured for environmental obligations as provided in the second bulleted paragraph of numbered paragraph 114.31(6)“e”(2)“1,” then the letter shall include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements and that documents how these obligations have been measured and reported, and verifies that the tangible net worth of the owner or operator is at least $10 million plus the amount of any guarantees provided.

(3) The owner or operator may cease the submission of the information required by paragraph 114.31(6)“e” only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

(4) The department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subparagraph 114.31(6)“e”(1), require the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in subparagraph 114.31(6)“e”(2). If the department finds that the owner or operator no longer meets the requirements of subparagraph 114.31(6)“e”(1), the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

(5) Calculation of costs to be assured. When calculating the current cost estimates for closure, postclosure, corrective action, or the sum of the combination of such costs to be covered, and any other environmental obligations assured by a financial test referred to in paragraph 114.31(6)“e,” the owner or operator must include cost estimates

required for subrules 114.31(3) to 114.31(5); cost estimates for municipal solid waste management facilities pursuant to 40 CFR Section 258.74; and cost estimates required for the following environmental obligations, if the owner or operator assures those environmental obligations through a financial test: obligations associated with UIC facilities under 40 CFR Part 144, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265.

f. Local government financial test. An owner or operator that satisfies the requirements of this paragraph may demonstrate financial assurance up to the amount specified below:

(1) Financial component.

1. The owner or operator must satisfy one of the following requirements:

• If the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, the owner or operator must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard & Poor's, on all such general obligation bonds; or

• The owner or operator must satisfy both of the following financial ratios based on the owner's or operator's most recent audited annual financial statement: a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05, and a ratio of annual debt service to total expenditures less than or equal to 0.20.

2. The owner or operator must prepare its financial statements in conformity with Generally Accepted Accounting Principles or Other Comprehensive Bases of Accounting and have its financial statements audited by an independent certified public accountant or the office of the auditor of the state of Iowa. The financial statement shall be in the form prescribed by the office of the auditor of the state of Iowa.

3. A local government is not eligible to assure its obligations in paragraph 114.31(6)"f" if it:

• Is currently in default on any outstanding general obligation bonds; or

• Has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard & Poor's; or

• Operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or

• Receives an adverse opinion or disclaimer of opinion from the independent certified public accountant or office of the auditor of the state of Iowa auditing its financial statement as required under numbered paragraph 114.31(6)"f"(1)"2." A qualified opinion that is related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance of this mechanism.

4. The following terms used in this paragraph are defined as follows:

• "Cash plus marketable securities" means all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions.

• “Debt service” means the amount of principal and interest due on a loan in a given time period, typically the current year.

• “Deficit” means total annual revenues minus total annual expenditures.

• “Total expenditures” means all expenditures, excluding capital outlays and debt repayment.

• “Total revenues” means revenues from all taxes and fees excluding revenue from funds managed by local government on behalf of a specific third party and does not include the proceeds from borrowing or asset sales.

(2) Public notice component. The local government owner or operator must include disclosure of the closure and postclosure costs assured through the financial test in its next annual audit report prior to the initial receipt of waste at the facility or prior to cancellation of an alternative financial assurance mechanism, whichever is later. A reference to corrective action costs must be placed in the next annual audit report after the corrective action plan is approved by the department. For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the facility’s official files until issuance of the next available annual audit report if timing does not permit the reference to be incorporated into the most recently issued annual audit report or budget. For closure and postclosure costs, conformance with Governmental Accounting Standards Board Statement 18 ensures compliance with this public notice component.

(3) Record–keeping and reporting requirements.

1. The local government owner or operator must submit to the department the following items:

• A letter signed by the local government’s chief financial officer that lists all the current cost estimates covered by a financial test, as described in subparagraph 114.31(6)“f”(4); provides evidence and certifies that the local government meets the conditions of numbered paragraphs 114.31(6)“f”(1)“1,” “2,” and “3”; and certifies that the local government meets the conditions of subparagraphs 114.31(6)“f”(2) and (4); and

• The local government’s annual financial report indicating compliance with the financial ratios required by numbered paragraph 114.31(6)“f”(1)“1,” second bulleted paragraph, if applicable, and the requirements of numbered paragraph 114.31(6)“f”(1)“2” and the third and fourth bulleted paragraphs of numbered paragraph 114.31(6)“f”(1)“3,” and also indicating that the requirements of Governmental Accounting Standards Board Statement 18 have been met.

2. The items required in numbered paragraph 114.31(6)“f”(3)“1” must be submitted to the department and placed in the facility’s official files prior to the receipt of waste or prior to the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or, in the case of corrective action, not later than 120 days after the corrective action plan is approved by the department.

3. After the initial submission of the required items and their placement in the facility’s official files, the local government owner or operator must update the information and place the updated information in the facility’s official files within 180 days following the close of the owner’s or operator’s fiscal year.

4. The owner or operator may cease the submission of the information required by paragraph 114.31(6)“f” only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

5. A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test, the local government must, within 180 days following the close of the owner’s or operator’s fiscal year, obtain alternative financial assurance that meets the requirements of this rule, place the required submissions for that assurance in the operating record, and notify the department that the owner or operator no longer meets the criteria of the financial test and that alternative financial assurance has been obtained.

6. The department, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial conditions from the local government. If the department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of the local government financial test, the local government must provide alternative financial assurance in accordance with this rule.

(4) Calculation of costs to be assured. The portion of the closure, postclosure, and corrective action costs which an owner or operator may assure under this paragraph is determined as follows:

1. If the local government owner or operator does not assure other environmental obligations through a financial test, the owner or operator may assure closure, postclosure, and corrective action costs that equal up to 43 percent of the local government’s total annual revenue.

2. If the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40 CFR Section 144.62, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, the owner or operator must add those costs to the closure, postclosure, and corrective action costs it seeks to assure under this paragraph. The total that may be assured must not exceed 43 percent of the local government’s total annual revenue.

3. The owner or operator must obtain an alternative financial assurance instrument for those costs that exceed the limits set in numbered paragraphs 114.31(6)“f”(4)“1” and “2.”

g. Corporate guarantee.

(1) An owner or operator may meet the requirements of this paragraph by obtaining a written guarantee. The guarantor must be the direct or higher–tier parent corporation of the owner or operator, an owner or operator whose parent corporation is also the parent corporation of the owner or operator, or an owner or operator with a “substantial business relationship” with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraph 114.31(6)“~~g~~e” and must comply with the terms of the guarantee. A certified copy of the guarantee must be placed in the facility’s operating record along with copies of the letter from a certified public accountant and the

accountant's opinions. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter from the certified public accountant must describe the value received in consideration of the guarantee. If the guarantor is an owner or operator with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee.

(2) The guarantee must be effective and all required submissions made to the department prior to the initial receipt of waste or before cancellation of an alternative financial mechanism, in the case of closure and postclosure; or, in the case of corrective action, no later than 120 days after the corrective action plan has been approved by the department.

(3) The terms of the guarantee must provide that:

1. If the owner or operator fails to perform closure, postclosure, or corrective action of a facility covered by the guarantee, or fails to obtain alternative financial assurance within 90 days of notice of intent to cancel pursuant to numbered paragraphs 114.31(6)"g"(3)"2" and "3," the guarantor will:

- Perform, or pay a third party to perform, closure, postclosure, or corrective action as required (performance guarantee); or
- Establish a fully funded trust fund as specified in paragraph 114.31(6)"a" in the name of the owner or operator (payment guarantee); or
- Obtain alternative financial assurance as required by subparagraph 114.31(6)"g"(3)"3."

2. The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements of this rule unless the guarantor sends prior notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the department, as evidenced by the return receipts.

3. If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the department, provide to the department adequate proof of alternative financial assurance, notice from the guarantor of withdrawal of the cancellation, or proof of the establishment of a fully funded trust fund pursuant to paragraph 114.31(6)"a." If the owner or operator fails to comply with the provisions of this numbered paragraph within the 90–day period, the guarantor must provide that alternative financial assurance prior to cancellation of the corporate guarantee.

(4) If a corporate guarantor no longer meets the requirements of paragraph 114.31(6)"e," the owner or operator must, within 90 days, obtain alternative financial assurance and submit proof of alternative financial assurance to the department. If the owner or operator fails to provide alternative financial assurance within the 90–day period, the guarantor must provide that alternative financial assurance within the next 30 days.

(5) The owner or operator is no longer required to meet the requirements of paragraph 114.31(6)"g" upon the submission to the department of proof of the substitution of alternative financial assurance or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

h. Local government guarantee. An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action by obtaining a written guarantee provided by a local government or jointly provided by the members of an agency established pursuant to Iowa Code chapter 28E. The guarantor must meet the requirements of the local government financial test in paragraph 114.31(6)"f" and must comply with the terms of a written guarantee.

(1) Terms of the written guarantee. The guarantee must be effective before the initial receipt of waste or before the cancellation of alternative financial assurance, in the case of closure and postclosure; or no later than 120 days after the corrective action plan is approved by the department. The guarantee must provide that:

1. If the owner or operator fails to perform closure, postclosure, or corrective action of a facility covered by the guarantee or fails to obtain alternative financial assurance within 90 days of notice of intent to cancel pursuant to numbered paragraphs 114.31(6)"h"(1)"2" and "3," the guarantor will:

- Perform, or pay a third party to perform, closure, postclosure, or corrective action as required; or
- Establish a fully funded trust fund as specified in paragraph 114.31(6)"a" in the name of the owner or operator; or
- Obtain alternative financial assurance as required by numbered paragraph 114.31(6)"h"(1)"3."

2. The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the department as evidenced by the return receipts.

3. If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the department, provide to the department adequate proof of alternative financial assurance, notice from the guarantor of withdrawal of the cancellation, or proof of the establishment of a fully funded trust fund pursuant to paragraph 114.31(6)"a." If the owner or operator fails to comply with the provisions of this numbered paragraph within the 90–day period, the guarantor must provide that alternative financial assurance prior to cancellation of the guarantee.

(2) Record–keeping and reporting requirements.

1. The owner or operator must submit to the department a certified copy of the guarantee along with the items required under subparagraph 114.31(6)"f"(3) and place a copy in the facility's official files before the initial receipt of waste or before cancellation of alternative financial assurance, whichever is later, in the case of closure and postclosure; or no later than 120 days after the corrective action plan has been approved by the department.

2. The owner or operator shall no longer be required to submit the items specified in numbered paragraph 114.31(6)"h"(2)"1" when proof of alternative financial assurance has been submitted to the department or the owner or operator is no longer required to provide financial assurance pursuant to this rule.

3. If a local government guarantor no longer meets the requirements of paragraph 114.31(6)"f," the owner or operator must, within 90 days, submit to the department proof of alternative financial assurance. If the owner or

operator fails to obtain alternative financial assurance within the 90–day period, the guarantor must provide that alternative financial assurance within the next 30 days.

i. Local government dedicated fund. The owner or operator of a publicly owned CND landfill or local government serving as a guarantor may demonstrate financial assurance for closure, postclosure, or corrective action, whichever is applicable, by establishing a dedicated fund or account that conforms to the requirements of this paragraph. A dedicated fund will be considered eligible if it complies with subparagraph 114.31(6)"i"(1) or (2), and all other provisions of this paragraph, and documentation of this compliance has been submitted to the department.

(1) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, or order to pay for closure, postclosure, or corrective action costs that arises from the operation of the CND landfill and shall be funded for the full amount of coverage or funded for part of the required amount of coverage and used in combination with another mechanism(s) that provides the remaining coverage.

(2) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, or order as a reserve fund and shall be funded for no less than the full amount of coverage or funded for part of the required amount of coverage and used in combination with another mechanism(s) that provides the remaining coverage.

(3) Payments into the dedicated fund must be made annually by the owner or operator for ten years or over the permitted life of the CND landfill, whichever is shorter, in the case of a dedicated fund for closure or postclosure; or over one–half of the estimated length of an approved corrective action plan in the case of a response to a known release. This is referred to as the pay–in period. The initial payment into the dedicated fund must be made before the initial receipt of waste in the case of closure and postclosure or no later than 120 days after the corrective action plan has been approved by the department.

(4) For a dedicated fund used to demonstrate financial assurance for closure and postclosure, the first payment into the dedicated fund must be at least equal to the amount specified in subrule 114.31(9), divided by the number of years in the pay–in period as defined in paragraph 114.31(6)"i." The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{CE - CB}{Y}$$

where CE is the total required financial assurance for the owner or operator, CB is the current balance of the fund, and Y is the number of years remaining in the pay–in period.

(5) For a dedicated fund used to demonstrate financial assurance for corrective action, the first payment into the dedicated fund must be at least one–half of the current cost estimate, divided by the number of years in the corrective action pay–in period as defined in paragraph 114.31(6)"i." The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{RB - CF}{Y}$$

where RB is the most recent estimate of the required dedicated fund balance, which is the total cost that will be incurred during the second half of the corrective action period, CF is the current amount in the dedicated fund, and Y is the number of years remaining in the pay–in period.

(6) The initial payment into the dedicated fund must be made before the initial receipt of waste or within 30 days of close of the first fiscal year that begins after [the effective date of this rule] in the case of existing facilities, or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or no later than 120 days after the corrective action remedy has been approved by the department.

(7) After the pay–in period has been completed, the dedicated fund shall be adjusted annually to correct any deficiency of the fund with respect to the adjusted cost estimate and may be adjusted annually should the balance in the fund exceed the adjusted cost estimate.

114.31(7) General requirements.

a. Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this rule by establishing more than one financial mechanism per facility. The mechanisms must be a combination of those mechanisms outlined in this rule and must provide financial assurance for an amount at least equal to the current cost estimate for closure, postclosure, or corrective action, whichever is applicable. The financial test and a guarantee provided by a corporate parent, sibling or grandparent may not be combined if the financial statements of the two entities are consolidated.

b. Use of one mechanism for multiple facilities. An owner or operator may satisfy the requirements of this rule for multiple CND landfills by the use of one mechanism if the owner or operator ensures that the mechanism provides financial assurance for an amount at least equal to the current cost estimates for closure, postclosure, or corrective action, whichever is applicable, for all CND landfills covered.

c. Criteria. The language of the financial assurance mechanisms listed in this rule must ensure that the instruments satisfy the following criteria:

(1) The financial assurance mechanisms must ensure that the amount of funds assured is sufficient to cover the costs of closure, postclosure, or corrective action for known releases, whichever is applicable;

(2) The financial assurance mechanisms must ensure that funds will be available in a timely fashion when needed;

(3) The financial assurance mechanisms must be obtained by the owner or operator prior to the initial receipt of solid waste and no later than 120 days after the corrective action remedy has been approved by the department until the owner or operator is released from the financial assurance requirements; and

(4) The financial assurance mechanisms must be legally valid, binding, and enforceable under Iowa law.

d. No permit shall be issued by the department pursuant to Iowa Code Supplement section 455B.305 unless the applicant has demonstrated compliance with rule 114.31(455B).

114.31(8) Closure and postclosure accounts. The holder of a permit for a CND landfill shall maintain a separate account for closure and postclosure as required by Iowa Code Supplement section 455B.306(9)"b." The account shall be specific to a particular facility.

a. Definitions. For the purpose of this subrule, the following definitions shall apply:

"Account" means a formal separate set of records.

"Current balance" means cash in an account established pursuant to this subrule plus the current value of investments of moneys collected pursuant to subrule 114.31(8) and used to purchase one or more of the investments listed in Iowa Code section 12B.10(5).

"Current cost estimate" means the closure cost estimate prepared and submitted to the department pursuant to subrule 114.31(3) and the postclosure cost estimate prepared and submitted pursuant to subrule 114.31(4).

b. Moneys in the accounts shall not be assigned for the benefit of creditors except the state of Iowa.

c. Moneys in the accounts shall not be used to pay any final judgment against a permit holder arising out of the ownership or operation of the site during its active life or after closure.

d. Withdrawal of funds. Except as provided in paragraph 114.31(8)"e," moneys in the accounts may be withdrawn without department approval only for the purpose of funding closure, including partial closure, or postclosure activities that are in conformance with a closure/postclosure plan which has been submitted pursuant to subrule 114.13(10). Withdrawals for activities not in conformance with a closure/postclosure plan must receive prior written approval from the department. Permit holders using a trust fund established pursuant to paragraph 114.31(6)"a" to satisfy the requirements of this rule must comply with the requirements of subparagraph 114.31(6)"a"(6) prior to withdrawal.

e. Excess funds. If the balance of a closure or postclosure account exceeds the current cost estimate for closure or postclosure at any time, the permit holder may withdraw the excess funds so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

f. Initial proof of establishment of account. A permit holder shall submit a statement of account, signed by the permit holder, to the department by April 1, 2008, that indicates that accounts have been established pursuant to this subrule. Permit holders for new CND landfills permitted after April 1, 2008, shall submit to the department, prior to the landfill's initial receipt of waste, a statement of account, signed by the permit holder.

g. An account established pursuant to paragraph 114.31(6)"a" for trust funds or paragraph 114.31(6)"i" for local government dedicated funds also satisfies the requirements of this subrule, and the permit holder shall not be required to establish closure and postclosure accounts in addition to said financial assurance accounts.

Accounts established pursuant to paragraphs 114.31(6)"a" or 114.31(6)"i," which are intended to satisfy the requirements of this subrule, must comply with Iowa Code Supplement section 455B.306(9)"b."

h. Yearly deposits. Deposits into the closure and postclosure accounts shall be made at least yearly in the amounts specified in this subrule beginning with the close of the facility's first fiscal year that begins after [the effective date of

this rule]. The deposits shall be made within 30 days of the close of each fiscal year. The minimum yearly deposit to the closure and postclosure accounts shall be determined using the following formula:

$$\frac{CE - CB}{RPC} \times TR = \text{yearly deposit to account}$$

Where:

"CE" means the current cost estimate of closure and postclosure costs.

"CB" means the current balance of the closure or postclosure accounts.

"RPC" means the remaining permitted capacity, in tons, of the landfill as of the start of the permit holder's fiscal year.

"TR" is the number of tons of solid waste disposed of at the facility in the prior year.

i. Closure and postclosure accounts may be commingled with other accounts so long as the amounts credited to each account balance are reported separately pursuant to paragraphs 114.31(3)"a" and 114.31(4)"a."

j. The department shall have full rights of access to all funds existing in a facility's closure or postclosure account, at the sole discretion of the department, if the permit holder fails to undertake closure or postclosure activities after being directed to do so by a final agency action of the department. These funds shall be used only for the purposes of funding closure and postclosure activities at the site.

114.31(9) Amount of required financial assurance. A financial assurance mechanism established pursuant to subrule 114.31(6) shall be in the amount of the third–party cost estimates required by subrules 114.31(3), 114.31(4), and 114.31(5) except that the amount of the financial assurance may be reduced by the sum of the cash balance in a trust fund or local government dedicated fund established to comply with subrule 114.31(8) plus the current value of investments held by said trust fund or local government dedicated fund if invested in one or more of the investments listed in Iowa Code section 12B.10(5).

ITEM 7. Amend 567—Chapter 115 by adopting the following **new** rule:

567—115.31(455B) Industrial monofill sanitary landfill financial assurance.

115.31(1) Purpose. The purpose of this rule is to implement Iowa Code section 455B.304(8) and Supplement section 455B.306(9) by providing the criteria for establishing financial assurance for closure, postclosure and corrective action at industrial monofill landfills (IMF landfills).

115.31(2) Applicability. The requirements of this rule apply to all owners and operators of IMF landfills accepting waste as of [the effective date of this rule] except owners or operators that are state or federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States.

115.31(3) Financial assurance for closure. The owner or operator of an IMF landfill must establish financial assurance for closure in accordance with the criteria in this rule. The owner or operator must provide continuous coverage for closure until released from this requirement by demonstrating compliance with subrules 115.26(13) and

115.13(10). Proof of compliance pursuant to paragraphs 115.31(3)“a” through “e” must be submitted by the owner or operator yearly by April 1 and approved by the department.

a. The owner or operator shall submit the current version of department Form 542–8090, Sanitary Landfill Financial Assurance Report Form, which contains, but is not limited to, the amount of the financial assurance, the annual financial statement required by Iowa Code Supplement sections 455B.306(9)“e” and 455B.306(7)“c,” and the current balances of the closure and postclosure accounts at the time of submittal as required by Iowa Code Supplement section 455B.306(9)“b.”

b. The owner or operator shall submit a copy of the financial assurance instruments or the documents establishing the financial assurance instruments in an amount equal to or greater than the amount specified in subrule 115.31(9). Documentation for the mechanism(s) used to demonstrate financial assurance shall contain, at a minimum, the items required to be submitted as specified in paragraphs 115.31(6)“a” to “i.”

c. The owner or operator shall submit a detailed written estimate, in current dollars, certified by an Iowa–licensed professional engineer, of the cost of hiring a third party to close the IMF landfill in accordance with the closure plan as required by subrules 115.26(13) and 115.13(10). Such estimate must be available at any time during the active life of the landfill.

(1) The cost estimate must equal the cost of closing the IMF landfill at any time during the permitted life of the facility when the extent and manner of its operation would make closure the most expensive.

(2) The costs contained in the third–party estimate for closure must be accurate and reasonable when compared to the cost estimates used by other similarly situated landfills in Iowa.

(3) During the active life of the landfill, the owner or operator must annually adjust the closure cost estimate for inflation.

(4) The owner or operator must, annually or at the time of application for a permit amendment that increases closure costs, whichever occurs first, increase the closure cost estimate and the amount of financial assurance provided if changes to the closure plan or IMF landfill conditions increase the maximum cost of closure at any time during the remaining active life of the facility.

(5) The owner or operator may reduce the amount of financial assurance for closure if the most recent estimate of the maximum cost of closure at any time during the active life of the facility is less than the amount of financial assurance currently provided. Prior to the reduction, the owner or operator must submit to the department the justification for the reduction of the closure cost estimate and the updated documentation required by paragraphs 115.31(3)“a” through “e” and receive department approval for the reduction. Approval or denial shall be issued within 30 days of receipt of the reduction request.

(6) The third–party estimate submitted to the department must include the site area subject to closure and account for at least the following factors determined by the department to be minimal necessary costs for closure:

1. Closure and postclosure plan document revisions;

2. Site preparation, earthwork and final grading;

3. Drainage control culverts, piping and structures;

4. Erosion control structures, sediment ponds and terraces;

5. Final cap construction;

6. Cap vegetation soil placement;

7. Cap seeding, mulching and fertilizing;

8. Monitoring well, piezometer and gas control modifications;

9. Leachate system cleanout and extraction well modifications;

10. Monitoring well installations and abandonments;

11. Facility modifications to effect closed status;

12. Engineering and technical services;

13. Legal, financial and administrative services; and

14. Closure compliance certifications and documentation.

d. For publicly owned IMF landfills, the owner or operator shall submit to the department a copy of the owner's or operator's most recent annual audit report in the form prescribed by the office of the auditor of the state of Iowa.

e. Privately held IMF landfills shall submit an affidavit from the owner or operator indicating that a yearly review has been performed by a certified public accountant to determine whether the privately owned landfill is in compliance with this rule. The affidavit shall state the name of the certified public accountant, the dates and conclusions of the review, and the steps taken to rectify any deficiencies identified by the accountant.

115.31(4) Financial assurance for postclosure. The owner or operator of an IMF landfill must establish financial assurance for the costs of postclosure in accordance with the criteria in this rule. The owner or operator must provide continuous coverage for postclosure until released from this requirement by demonstrating compliance with the postclosure plan and the closure permit. Proof of compliance pursuant to paragraphs 115.31(4)"a" through "e" must be submitted by the owner or operator yearly by April 1 and approved by the department.

a. The owner or operator shall submit the current version of department Form 542–8090, Sanitary Landfill Financial Assurance Report Form, which contains, but is not limited to, the amount of the financial assurance, the annual financial statement required by Iowa Code Supplement sections 455B.306(9)"e" and 455B.306(7)"c," and the current balances of the closure and postclosure accounts required by Iowa Code Supplement section 455B.306(9)"b."

b. The owner or operator shall submit a copy of the documents establishing a financial assurance instrument in an amount equal to or greater than the amount specified in subrule 115.31(9). Documentation for the mechanism(s) used to demonstrate financial assurance shall contain, at a minimum, the items required to be submitted as specified in paragraphs 115.31(6)"a" to "i."

c. The owner or operator shall submit a detailed written estimate, in current dollars, certified by an Iowa–licensed professional engineer, of the cost of hiring a third party to conduct postclosure for the IMF landfill in compliance with

the postclosure plan developed pursuant to subrules 115.26(14) and 115.13(10). The cost estimate must account for the total cost of conducting postclosure, as described in the plan, for the entire postclosure period.

(1) The cost estimate for postclosure must be based on the most expensive costs of postclosure during the entire postclosure period.

(2) The costs contained in the third–party estimate for postclosure must be accurate and reasonable when compared to the cost estimates used by other similarly situated landfills in Iowa.

(3) During the active life of the IMF landfill and during the postclosure period, the owner or operator must annually adjust the postclosure cost estimate for inflation.

(4) The owner or operator must, annually or at the time of application for a permit amendment that increases postclosure costs, whichever occurs first, increase the estimate and the amount of financial assurance provided if changes in the postclosure plan or IMF landfill conditions increase the maximum cost of postclosure.

(5) The owner or operator may reduce the amount of financial assurance for postclosure if the most recent estimate of the maximum cost of postclosure beginning at any time during the active life of the facility is less than the amount of financial assurance currently provided. Prior to the reduction, the owner or operator must submit to the department the justification for the reduction of the postclosure cost estimate and the updated documentation required by paragraphs 115.31(4)“a” through “e” and must receive department approval for the reduction. Approval or denial shall be issued within 30 days of receipt of the reduction request.

(6) The third–party estimate submitted to the department must include the site area subject to postclosure and account for at least the following factors determined by the department to be minimal necessary costs for postclosure:

1. General site facilities, access roads and fencing maintenance;
2. Cap and vegetative cover maintenance;
3. Drainage and erosion control systems maintenance;
4. Groundwater to waste separation systems maintenance;
5. Gas control systems maintenance;
6. Gas control systems monitoring and reports;
7. Groundwater and surface water monitoring systems maintenance;
8. Groundwater and surface water quality monitoring and reports;
9. Groundwater monitoring systems performance evaluations and reports;
10. Leachate control systems maintenance;
11. Leachate management, transportation and disposal;
12. Leachate control systems performance evaluations and reports;
13. Facility inspections and reports;
14. Engineering and technical services;
15. Legal, financial and administrative services; and

16. Financial assurance, accounting, audits and reports.

d. For publicly owned IMF landfills, the owner or operator shall submit to the department a copy of the owner's or operator's most recent annual audit report in the form prescribed by the office of the auditor of the state of Iowa.

e. Privately held IMF landfills shall submit an affidavit from the owner or operator indicating that a yearly review has been performed by a certified public accountant to determine whether the privately owned landfill is in compliance with this rule. The affidavit shall state the name of the certified public accountant, the dates and conclusions of the review, and the steps taken to rectify any deficiencies identified by the accountant.

115.31(5) Financial assurance for corrective action.

a. An owner or operator required to undertake corrective action pursuant to subrules 115.26(4) through 115.26(9) must have a detailed written estimate, in current dollars, prepared by an Iowa–licensed professional engineer, of the cost of hiring a third party to perform the required corrective action. The estimate must account for the total costs of the activities described in the approved corrective action plan for the entire corrective action period. The owner or operator must submit to the department the estimate and financial assurance documentation within 30 days of department approval of the corrective action plan.

(1) The owner or operator must annually adjust the estimate for inflation until the corrective action plan is completed.

(2) The owner or operator must increase the cost estimate and the amount of financial assurance provided if changes in the corrective action plan or IMF landfill conditions increase the maximum cost of corrective action.

(3) The owner or operator may reduce the amount of the cost estimate and the amount of financial assurance provided if the estimate exceeds the maximum remaining costs of the remaining corrective action. The owner or operator must submit to the department the justification for the reduction of the cost estimate and documentation of financial assurance.

b. The owner or operator of an IMF landfill required to undertake a corrective action plan must establish financial assurance for the most recent corrective action plan by one of the mechanisms prescribed in subrule 115.31(6). The owner or operator must provide continuous coverage for corrective action until released from financial assurance requirements by demonstrating compliance with the following:

(1) Upon completion of the remedy, the owner or operator must submit to the department a certification of compliance with the approved corrective action plan. The certification must be signed by the owner or operator and by an Iowa–licensed professional engineer.

(2) Upon department approval of completion of the corrective action remedy, the owner or operator shall be released from the requirements for financial assurance for corrective action.

115.31(6) Allowable financial assurance mechanisms. The mechanisms used to demonstrate financial assurance as required by Iowa Code Supplement section 455B.306(9)"a" must ensure that the funds necessary to meet the costs of

closure, postclosure, and corrective action for known releases will be available whenever the funds are needed. Owners or operators must choose from options in paragraphs 115.31(6)“a” to “i.”

a. Trust fund.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action, whichever is applicable, by establishing a trust fund which conforms to the requirements of this subrule. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. A copy of the trust agreement must be submitted pursuant to subrules 115.31(3), 115.31(4), and 115.31(5) and placed in the facility’s official files.

(2) Payments into the trust fund must be made annually by the owner or operator over ten years or over the remaining life of the IMF landfill, whichever is shorter, in the case of a trust fund for closure or postclosure; or over one–half of the estimated length of the corrective action plan in the case of response to a known release. This period is referred to as the pay–in period.

(3) For a trust fund used to demonstrate financial assurance for closure and postclosure, the first payment into the fund must be at least equal to the amount specified in subrule 115.31(9) for closure or postclosure divided by the number of years in the pay–in period as defined in subparagraph 115.31(6)“a”(2). The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{CE - CB}{Y}$$

where CE is the amount specified in subrule 115.31(9) for closure or postclosure (updated for inflation or other changes), CB is the current balance of the trust fund, and Y is the number of years remaining in the pay–in period.

(4) For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund must be at least equal to one–half of the current cost estimate for corrective action divided by the number of years in the corrective action pay–in period as defined in subparagraph 115.31(6)“a”(2). The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{RB - CV}{Y}$$

where RB is the most recent estimate of the required trust fund balance for corrective action, which is the total cost that will be incurred during the second half of the corrective action period, CV is the current value of the trust fund, and Y is the number of years remaining in the pay–in period.

(5) The initial payment into the trust fund must be made before the initial receipt of waste or within 30 days of close of the first fiscal year that begins after [the effective date of this rule], in the case of existing facilities, or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or no later than 120 days after the corrective action remedy has been approved by the department.

(6) The owner or operator, or other person authorized to conduct closure, postclosure, or corrective action activities, may request reimbursement from the trustee for these expenditures, including partial closure, as the expenditures are

incurred. Requests for reimbursement will be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure, postclosure, or corrective action and if justification and documentation of the costs are placed in the operating record. The owner or operator must submit to the department documentation of the justification for reimbursement and verification that reimbursement has been received.

(7) The trust fund may be terminated by the owner or operator only if the owner or operator substitutes alternative financial assurance as specified in this rule or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

(8) After the pay–in period has been completed, the trust fund shall be adjusted annually to correct any deficiency of the fund with respect to the adjusted cost estimate and may be adjusted annually should the balance in the fund exceed the adjusted cost estimate.

b. Surety bond guaranteeing payment or performance.

(1) An owner or operator may demonstrate financial assurance for closure or postclosure by obtaining a payment or performance surety bond which conforms to the requirements of this subrule. An owner or operator may demonstrate financial assurance for corrective action by obtaining a performance bond which conforms to the requirements of this subrule. The bond must be effective before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or no later than 120 days after the corrective action remedy has been approved by the department. The owner or operator must submit a copy of the bond to the department and keep a copy in the facility's official files. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury. The state shall not be considered a party to the surety bond.

(2) The penal sum of the bond must be in an amount at least equal to the amount specified in subrule 115.31(9) for closure and postclosure or corrective action, whichever is applicable.

(3) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond and also upon notice from the department pursuant to subparagraph 115.31(6)"b"(6).

(4) The owner or operator must establish a standby trust fund. The standby trust fund must meet the requirements of paragraph 115.31(6)"a" except the requirements for initial payment and subsequent annual payments specified in subparagraphs 115.31(6)"a"(2) through (5).

(5) Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund. Payments from the trust fund must be approved by the trustee and the department.

(6) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice from the surety of withdrawal of the cancellation, or proof of a deposit into the standby trust fund of a sum equal

to the amount of the bond. If the owner or operator has not complied with this subparagraph within the 60–day time period, this shall constitute a failure to perform and the department shall notify the surety, prior to the expiration of the 120–day notice period, that such a failure has occurred.

(7) The bond must be conditioned upon faithful performance by the owner or operator of all closure, postclosure, or corrective action requirements of the Code of Iowa and this rule. A failure to comply with subparagraph 115.31(6)"b"(6) shall also constitute a failure to perform under the terms of the bond.

(8) Liability under the bond shall be for the duration of the operation, closure, and postclosure period.

(9) The owner or operator may cancel the bond only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

c. Letter of credit.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action, whichever is applicable, by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph. The letter of credit must be effective before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or no later than 120 days after the corrective action plan is approved by the department. The owner or operator must submit to the department a copy of the letter of credit and place a copy in the facility's official files. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter–of–credit operations are regulated and examined by a federal or state agency.

(2) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the name and address of the facility, and the amount of funds assured, must be included with the letter of credit submitted to the department and placed in the facility's files.

(3) The letter of credit must be irrevocable and issued for a period of at least one year in an amount at least equal to the amount specified in subrule 115.31(9) for closure, postclosure or corrective action, whichever is applicable. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the letter of credit into a standby trust fund established pursuant to paragraph 103.3(6)"a." If the owner or operator has not complied with this subrule within the 60-day time period, the issuer of the letter of credit shall deposit a sum equal to the amount of the letter of credit into the standby trust fund established by the owner or operator. The provision of funds by the issuer of the letter of credit shall be considered an issuance of a loan to the owner or operator, and the terms of that loan shall be governed by the

letter of credit or subsequent agreement between those parties. The state shall not be considered a party to this credit transaction.

(4) The owner or operator may cancel the letter of credit only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

d. Insurance.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action by obtaining insurance which conforms to the requirements of this paragraph. The insurance must be effective before the initial receipt of waste or prior to cancellation of an alternative financial assurance, in the case of closure and postclosure; or no later than 120 days after the corrective action plan has been approved by the department. At a minimum, the insurer must be licensed to transact the business of insurance, or be eligible to provide insurance as an excess or surplus lines insurer, in one or more states. The owner or operator must submit to the department a copy of the insurance policy and retain a copy in the facility's official files.

(2) The closure or postclosure insurance policy must guarantee that funds will be available to close the IMF landfill whenever final closure occurs or to provide postclosure for the IMF landfill whenever the postclosure period begins, whichever is applicable. The policy must also guarantee that once closure or postclosure begins, the insurer will be responsible for the paying out of funds to the owner or operator or other person authorized to conduct closure or postclosure, up to an amount equal to the face amount of the policy.

(3) The insurance policy must be issued for a face amount at least equal to the amount specified in subrule 115.31(9) for closure, postclosure, or corrective action, whichever is applicable. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(4) An owner or operator, or any other person authorized to conduct closure or postclosure, may receive reimbursements for closure or postclosure expenditures, including partial closure, as applicable. Requests for reimbursement will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure or postclosure, and if justification and documentation of the cost are placed in the operating record. The owner or operator must submit to the department documentation of the justification for reimbursement and verification that the reimbursement has been received.

(5) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused.

(6) The insurance policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner or operator and to the department 120

days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice from the insurer of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the insurance coverage into a standby trust fund established pursuant to paragraph 103.3(6)“a.” If the owner or operator has not complied with this subparagraph within the 60–day time period, this shall constitute a failure to perform and shall be a covered event pursuant to the terms of the insurance policy. A failure by the owner or operator to comply with this subparagraph within the 60–day period shall make the insurer liable for the closure and postclosure of the covered facility up to the amount of the policy limits, which shall be equal to the most recently submitted cost estimates.

(7) For insurance policies providing coverage for postclosure, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon–issue yield announced by the U.S. Treasury for 26–week treasury securities.

(8) The owner or operator may cancel the insurance only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

e. Corporate financial test. An owner or operator that satisfies the requirements of this paragraph may demonstrate financial assurance up to the amount specified below:

(1) Financial component. The owner or operator must satisfy the requirements of numbered paragraphs 115.31(6)“e”(1)“1,” “2,” and “3” to meet the financial component of the corporate financial test.

1. The owner or operator must satisfy one of the following three conditions:

- A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard & Poor’s or Aaa, Aa, A or Baa as issued by Moody’s; or
- A ratio of less than 1.5 comparing total liabilities to net worth (net worth calculations may not include future permitted capacity of the subject landfill as an asset); or
- A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus $10 million, to total liabilities;

2. The tangible net worth, excluding future permitted capacity of the subject landfill, of the owner or operator must be greater than:

- The sum of the current closure, postclosure, and corrective action cost estimates and any other environmental obligations, including guarantees, covered by this financial test plus $10 million except as provided in the second bulleted paragraph in numbered paragraph 115.31(6)“e”(1)“2”; or
- Net worth of $10 million, excluding future permitted capacity of the subject landfill, plus the amount of any guarantees that have not been recognized as liabilities on the financial statements, provided that all of the current

closure, postclosure, and corrective action costs and any other environmental obligations covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements, and are subject to the approval of the department; and

3. The owner or operator must have, located in the United States, assets, excluding future permitted capacity of the subject landfill, amounting to at least the sum of current closure, postclosure, and corrective action cost estimates and any other environmental obligations covered by a financial test as described in subparagraph 115.31(6)"e"(5).

(2) Record–keeping and reporting requirements. The owner or operator must submit the following records to the department and place a copy in the facility's official files prior to the initial receipt of solid waste or cancellation of an alternative financial assurance instrument, in the case of closure and postclosure; or no later than 120 days after the corrective action plan has been approved by the department:

1. A letter signed by a certified public accountant and based upon a certified audit that:

• Lists all the current cost estimates covered by a financial test including, but not limited to, cost estimates required by subrules 115.31(3) to 115.31(5); cost estimates required for municipal solid waste management facilities pursuant to 40 CFR Part 258; cost estimates required for UIC facilities under 40 CFR Part 144, if applicable; cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable; cost estimates required for PCB storage facilities under 40 CFR Part 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable; and

• Provides evidence demonstrating that the owner or operator meets the conditions of subparagraph 115.31(6)"e"(1).

2. A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion or disclaimer of opinion shall be cause for disallowance of this mechanism. A qualified opinion related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance. If the department does not allow use of the corporate financial test, the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

3. If the certified public accountant's letter providing evidence of financial assurance includes financial data which shows that the owner or operator satisfies subparagraph 115.31(6)"e"(1) but which differs from data in the audited financial statements referred to in numbered paragraph 115.31(6)"e"(2)"2," then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed–upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the certified public accountant's letter derived from the independently audited, year–end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

4. If the certified public accountant's letter provides a demonstration that the owner or operator has assured for environmental obligations as provided in the second bulleted paragraph of numbered paragraph 115.31(6)"e"(2)"1," then the letter shall include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements and that documents how these obligations have been measured and reported, and verifies that the tangible net worth of the owner or operator is at least $10 million plus the amount of any guarantees provided.

(3) The owner or operator may cease the submission of the information required by paragraph 115.31(6)"e" only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

(4) The department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subparagraph 115.31(6)"e"(1), require the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in subparagraph 115.31(6)"e"(2). If the department finds that the owner or operator no longer meets the requirements of subparagraph 115.31(6)"e"(1), the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

(5) Calculation of costs to be assured. When calculating the current cost estimates for closure, postclosure, corrective action, or the sum of the combination of such costs to be covered, and any other environmental obligations assured by a financial test referred to in paragraph 115.31(6)"e," the owner or operator must include cost estimates required for subrules 115.31(3) to 115.31(5); cost estimates for municipal solid waste management facilities pursuant to 40 CFR Section 258.74; and cost estimates required for the following environmental obligations, if the owner or operator assures those environmental obligations through a financial test: obligations associated with UIC facilities under 40 CFR Part 144, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265.

f. Local government financial test. An owner or operator that satisfies the requirements of this paragraph may demonstrate financial assurance up to the amount specified below:

(1) Financial component.

1. The owner or operator must satisfy one of the following requirements:

• If the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, the owner or operator must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard & Poor's, on all such general obligation bonds; or

• The owner or operator must satisfy each of the following financial ratios based on the owner's or operator's most recent audited annual financial statement: a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05, and a ratio of annual debt service to total expenditures less than or equal to 0.20.

2. The owner or operator must prepare its financial statements in conformity with Generally Accepted Accounting Principles or Other Comprehensive Bases of Accounting and have its financial statements audited by an independent certified public accountant or the office of the auditor of the state of Iowa. The financial statement shall be in the form prescribed by the office of the auditor of the state of Iowa.

3. A local government is not eligible to assure its obligations in paragraph 115.31(6)"f" if it:

- Is currently in default on any outstanding general obligation bonds; or
- Has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard & Poor's; or
- Operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or
- Receives an adverse opinion or disclaimer of opinion from the independent certified public accountant or office of the auditor of the state of Iowa auditing its financial statement as required under numbered paragraph 115.31(6)"f"(1)"2." A qualified opinion that is related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance of this mechanism.

4. The following terms used in this paragraph are defined as follows:

- "Cash plus marketable securities" means all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions.
- "Debt service" means the amount of principal and interest due on a loan in a given time period, typically the current year.
- "Deficit" means total annual revenues minus total annual expenditures.
- "Total expenditures" means all expenditures, excluding capital outlays and debt repayment.
- "Total revenues" means revenues from all taxes and fees excluding revenue from funds managed by local government on behalf of a specific third party and does not include the proceeds from borrowing or asset sales.

(2) Public notice component. The local government owner or operator must include disclosure of the closure and postclosure costs assured through the financial test in its next annual audit report prior to the initial receipt of waste at the facility or prior to cancellation of an alternative financial assurance mechanism, whichever is later. A reference to corrective action costs must be placed in the next annual audit report after the corrective action plan is approved by the department. For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the facility's official files until issuance of the next available annual audit report if timing does not permit the reference to be incorporated into the most recently issued annual audit report or budget. For closure and postclosure costs, conformance with Governmental Accounting Standards Board Statement 18 ensures compliance with this public notice component.

(3) Record–keeping and reporting requirements.

1. The local government owner or operator must submit to the department the following items:

• A letter signed by the local government's chief financial officer that lists all the current cost estimates covered by a financial test, as described in subparagraph 115.31(6)"f"(4); provides evidence and certifies that the local government meets the conditions of numbered paragraphs 115.31(6)"f"(1)"1," "2," and "3"; and certifies that the local government meets the conditions of subparagraphs 115.31(6)"f"(2) and (4); and

• The local government's annual financial report indicating compliance with the financial ratios required by numbered paragraph 115.31(6)"f"(1)"1," second bulleted paragraph, if applicable, and the requirements of numbered paragraph 115.31(6)"f"(1)"2" and the third and fourth bulleted paragraphs of numbered paragraph 115.31(6)"f"(1)"3"; and also indicating that the requirements of Governmental Accounting Standards Board Statement 18 have been met.

2. The items required in numbered paragraph 115.31(6)"f"(3)"1" must be submitted to the department and placed in the facility's official files prior to the receipt of waste or prior to the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or, in the case of corrective action, not later than 120 days after the corrective action plan is approved by the department.

3. After the initial submission of the required items and their placement in the facility's official files, the local government owner or operator must update the information and place the updated information in the facility's official files within 180 days following the close of the owner's or operator's fiscal year.

4. The owner or operator may cease the submission of the information required by paragraph 115.31(6)"f" only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

5. A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test, the local government must, within 180 days following the close of the owner's or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this rule, place the required submissions for that assurance in the operating record, and notify the department that the owner or operator no longer meets the criteria of the financial test and that alternative financial assurance has been obtained.

6. The department, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial conditions from the local government. If the department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of the local government financial test, the local government must provide alternative financial assurance in accordance with this rule.

(4) Calculation of costs to be assured. The portion of the closure, postclosure, and corrective action costs which an owner or operator may assure under this paragraph is determined as follows:

1. If the local government owner or operator does not assure other environmental obligations through a financial test, the owner or operator may assure closure, postclosure, and corrective action costs that equal up to 43 percent of the local government's total annual revenue.

2. If the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40 CFR Section 144.62, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, the owner or operator must add those costs to the closure, postclosure, and corrective action costs it seeks to assure under this paragraph. The total that may be assured must not exceed 43 percent of the local government's total annual revenue.

3. The owner or operator must obtain an alternative financial assurance instrument for those costs that exceed the limits set in numbered paragraphs 115.31(6)"f"(4)"1" and "2."

g. Corporate guarantee.

(1) An owner or operator may meet the requirements of this paragraph by obtaining a written guarantee. The guarantor must be the direct or higher–tier parent corporation of the owner or operator, an owner or operator whose parent corporation is also the parent corporation of the owner or operator, or an owner or operator with a "substantial business relationship'' with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraph 115.31(6)"~~g~~e" and must comply with the terms of the guarantee. A certified copy of the guarantee must be placed in the facility's operating record along with copies of the letter from a certified public accountant and the accountant's opinions. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter from the certified public accountant must describe the value received in consideration of the guarantee. If the guarantor is an owner or operator with a ''substantial business relationship'' with the owner or operator, this letter must describe this ''substantial business relationship'' and the value received in consideration of the guarantee.

(2) The guarantee must be effective and all required submissions made to the department prior to the initial receipt of waste or before cancellation of an alternative financial mechanism, in the case of closure and postclosure; or, in the case of corrective action, no later than 120 days after the corrective action plan has been approved by the department.

(3) The terms of the guarantee must provide that:

1. If the owner or operator fails to perform closure, postclosure, or corrective action of a facility covered by the guarantee, or fails to obtain alternative financial assurance within 90 days of notice of intent to cancel pursuant to numbered paragraphs 115.31(6)"g"(3)"2" and "3," the guarantor will:

- Perform, or pay a third party to perform, closure, postclosure, or corrective action as required (performance guarantee); or
- Establish a fully funded trust fund as specified in paragraph 115.31(6)"a" in the name of the owner or operator (payment guarantee); or
- Obtain alternative financial assurance as required by numbered paragraph 115.31(6)"g"(3)"3."

2. The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements of this rule unless the guarantor sends prior notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the 120 days beginning on the date of

receipt of the notice of cancellation by both the owner or operator and the department, as evidenced by the return receipts.

3. If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the department, provide to the department adequate proof of alternative financial assurance, notice from the guarantor of withdrawal of the cancellation, or proof of the establishment of a fully funded trust fund pursuant to paragraph 115.31(6)"a." If the owner or operator fails to comply with the provisions of this numbered paragraph within the 90–day period, the guarantor must provide that alternative financial assurance prior to cancellation of the corporate guarantee.

(4) If a corporate guarantor no longer meets the requirements of paragraph 115.31(6)"e," the owner or operator must, within 90 days, obtain alternative financial assurance and submit proof of alternative financial assurance to the department. If the owner or operator fails to provide alternative financial assurance within the 90–day period, the guarantor must provide that alternative financial assurance within the next 30 days.

(5) The owner or operator is no longer required to meet the requirements of paragraph 115.31(6)"g" upon the submission to the department of proof of the substitution of alternative financial assurance or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

h. Local government guarantee. An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action by obtaining a written guarantee provided by a local government or jointly provided by the members of an agency established pursuant to Iowa Code chapter 28E. The guarantor must meet the requirements of the local government financial test in paragraph 115.31(6)"f" and must comply with the terms of a written guarantee.

(1) Terms of the written guarantee. The guarantee must be effective before the initial receipt of waste or before the cancellation of alternative financial assurance, in the case of closure and postclosure; or no later than 120 days after the corrective action plan is approved by the department. The guarantee must provide that:

1. If the owner or operator fails to perform closure, postclosure, or corrective action of a facility covered by the guarantee or fails to obtain alternative financial assurance within 90 days of notice of intent to cancel pursuant to numbered paragraphs 115.31(6)"h"(1)"2" and "3," the guarantor will:

- Perform, or pay a third party to perform, closure, postclosure, or corrective action as required; or
- Establish a fully funded trust fund as specified in paragraph 115.31(6)"a" in the name of the owner or operator; or
- Obtain alternative financial assurance as required by numbered subparagraph 115.31(6)"h"(1)"3."

2. The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the department as evidenced by the return receipts.

3. If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the department, provide to the department adequate proof of alternative financial assurance, notice from the guarantor of withdrawal of the cancellation, or proof of the establishment of a fully funded trust fund pursuant to paragraph 115.31(6)"a." If the owner or operator fails to comply with the provisions of this numbered paragraph within the 90–day period, the guarantor must provide that alternative financial assurance prior to cancellation of the guarantee.

(2) Record–keeping and reporting requirements.

1. The owner or operator must submit to the department a certified copy of the guarantee along with the items required under subparagraph 115.31(6)"f"(3) and place a copy in the facility's official files before the initial receipt of waste or before cancellation of alternative financial assurance, whichever is later, in the case of closure and postclosure; or no later than 120 days after the corrective action plan has been approved by the department.

2. The owner or operator shall no longer be required to submit the items specified in numbered paragraph 115.31(6)"h"(2)"1" when proof of alternative financial assurance has been submitted to the department or the owner or operator is no longer required to provide financial assurance pursuant to this rule.

3. If a local government guarantor no longer meets the requirements of paragraph 115.31(6)"f," the owner or operator must, within 90 days, submit to the department proof of alternative financial assurance. If the owner or operator fails to obtain alternative financial assurance within the 90–day period, the guarantor must provide that alternative financial assurance within the next 30 days.

i. Local government dedicated fund. The owner or operator of a publicly owned IMF landfill or local government serving as a guarantor may demonstrate financial assurance for closure, postclosure, or corrective action, whichever is applicable, by establishing a dedicated fund or account that conforms to the requirements of this subrule. A dedicated fund will be considered eligible if it complies with subparagraph 115.31(6)"i"(1) or (2), and all other provisions of this paragraph, and documentation of this compliance has been submitted to the department.

(1) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, or order to pay for closure, postclosure, or corrective action costs that arise from the operation of the IMF landfill and shall be funded for the full amount of coverage or funded for part of the required amount of coverage and used in combination with another mechanism(s) that provides the remaining coverage.

(2) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, or order as a reserve fund and shall be funded for no less than the full amount of coverage or funded for part of the required amount of coverage and used in combination with another mechanism(s) that provides the remaining coverage.

(3) Payments into the dedicated fund must be made annually by the owner or operator for ten years or over the permitted life of the IMF landfill, whichever is shorter, in the case of a dedicated fund for closure or postclosure; or over one–half of the estimated length of an approved corrective action plan in the case of a response to a known release. This is referred to as the pay–in period. The initial payment into the dedicated fund must be made before the initial

receipt of waste in the case of closure and postclosure or no later than 120 days after the corrective action plan has been approved by the department.

(4) For a dedicated fund used to demonstrate financial assurance for closure and postclosure, the first payment into the dedicated fund must be at least equal to the amount specified in subrule 115.31(9), divided by the number of years in the pay–in period as defined in paragraph 115.31(6)"i." The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{CE - CB}{Y}$$

where CE is the total required financial assurance for the owner or operator, CB is the current balance of the fund, and Y is the number of years remaining in the pay–in period.

(5) For a dedicated fund used to demonstrate financial assurance for corrective action, the first payment into the dedicated fund must be at least one–half of the current cost estimate, divided by the number of years in the corrective action pay–in period as defined in paragraph 115.31(6)"i." The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{RB - CF}{Y}$$

where RB is the most recent estimate of the required dedicated fund balance, which is the total cost that will be incurred during the second half of the corrective action period, CF is the current amount in the dedicated fund, and Y is the number of years remaining in the pay–in period.

(6) The initial payment into the dedicated fund must be made before the initial receipt of waste or within 30 days of close of the first fiscal year that begins after [the effective date of this rule], in the case of existing facilities, or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or no later than 120 days after the corrective action remedy has been approved by the department.

(7) After the pay–in period has been completed, the dedicated fund shall be adjusted annually to correct any deficiency of the fund with respect to the adjusted cost estimate and may be adjusted annually should the balance in the fund exceed the adjusted cost estimate.

115.31(7) General requirements.

a. Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this rule by establishing more than one financial mechanism per facility. The mechanisms must be a combination of those mechanisms outlined in this rule and must provide financial assurance for an amount at least equal to the current cost estimate for closure, postclosure, or corrective action, whichever is applicable. The financial test and a guarantee provided by a corporate parent, sibling or grandparent may not be combined if the financial statements of the two entities are consolidated.

b. Use of one mechanism for multiple facilities. An owner or operator may satisfy the requirements of this rule for multiple IMF landfills by the use of one mechanism if the owner or operator ensures that the mechanism provides

financial assurance for an amount at least equal to the current cost estimates for closure, postclosure, or corrective action, whichever is applicable, for all IMF landfills covered.

c. Criteria. The language of the financial assurance mechanisms listed in this rule must ensure that the instruments satisfy the following criteria:

(1) The financial assurance mechanisms must ensure that the amount of funds assured is sufficient to cover the costs of closure, postclosure, or corrective action for known releases, whichever is applicable;

(2) The financial assurance mechanisms must ensure that funds will be available in a timely fashion when needed;

(3) The financial assurance mechanisms must be obtained by the owner or operator prior to the initial receipt of solid waste and no later than 120 days after the corrective action remedy has been approved by the department until the owner or operator is released from the financial assurance requirements; and

(4) The financial assurance mechanisms must be legally valid, binding, and enforceable under Iowa law.

d. No permit shall be issued by the department pursuant to Iowa Code Supplement section 455B.305 unless the applicant has demonstrated compliance with rule 115.31(455B).

115.31(8) Amount of required financial assurance. A financial assurance mechanism established pursuant to subrule 115.31(6) shall be in the amount of the third–party cost estimates required by subrules 115.31(3), 115.31(4), and 115.31(5) except that the amount of the financial assurance may be reduced by the sum of the cash balance in a trust fund or local government dedicated fund established to comply with subrule 115.31(8) plus the current value of investments held by said trust fund or local government dedicated fund if invested in one or more of the investments listed in Iowa Code section 12B.10(5).

ITEM 8. Amend 567—Chapter 118 by adopting the following **new** rule:

567—118.16(455B,455D) Appliance demanufacturing facility financial assurance requirements. Unless a facility is exempt from this rule pursuant to subrule 118.16(1), permitted appliance demanufacturing facilities must obtain and submit a financial assurance instrument to the department for storage of appliances in accordance with this rule. The financial assurance instrument shall provide monetary funds to properly dispose of any appliances, refrigerant, PCBs, mercury and any other hazardous materials associated with appliance demanufacturing that may remain at a facility due to the owner's or operator's failure to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

118.16(1) Exemptions. An appliance demanufacturing facility owned and operated in conjunction with a sanitary landfill already required to have financial assurance shall not be required to obtain additional financial assurance in compliance with this chapter.

118.16(2) No permit without financial assurance. A permit shall not be issued or renewed to the owner or operator of an appliance demanufacturing facility until a financial assurance instrument has been submitted to and approved by the department.

118.16(3) Proof of compliance. Proof of the establishment of the financial assurance instrument and compliance with this rule, including a current closure cost estimate, shall be submitted to the department by July 1, 2008, or at the time of application for a permit for a new appliance demanufacturing facility. The owner or operator must provide continuous coverage for closure and submit proof of compliance, including an updated closure cost estimate, with each permit renewal thereafter until released from this requirement by the department.

118.16(4) Use of one financial assurance instrument for multiple permitted activities. Appliance demanufacturing facilities required to maintain financial assurance pursuant to any other provisions of 567-Chapters 100 to 123 may satisfy the requirements of this rule by the use of one financial assurance instrument if the permit holder ensures that the instrument provides financial assurance for an amount at least equal to the current cost estimates for closure of all sanitary disposal project activities covered.

118.16(5) The estimate submitted to the department must be certified by a professional engineer and account for at least the following factors determined by the department to be minimal necessary costs for closure pursuant to rule 118.14(455B,455D):

a. Third party labor and transportation costs and disposal fees to properly manage any appliances, refrigerant, PCBs, mercury and any other hazardous materials associated with appliance demanufacturing equal to the maximum storage capacity of the facility. If materials are temporarily stored on site in transportation vehicles, waste receptacles or drums, then this estimate shall include disposal costs for the maximum number of transportation vehicles, waste receptacles and drums that can be on site at any one time.

b. The cost of hiring a third party to properly clean and decontaminate all equipment, storage facilities, holding areas and drainage collection systems. This estimate shall include the cost of properly disposing of a one-week volume of washwater from the facility. If the facility utilizes washwater storage tanks, then this estimate shall assume that the storage tanks are full and add that volume to the one-week volume.

c. The costs for maintaining financial assurance pursuant to any other provisions of 567-Chapters 100 to 123, if any, in accordance with subrule 118.16(4).

118.16(6) Acceptable financial assurance instruments. The financial assurance instrument shall be established in an amount equal to the cost estimate prepared in accordance with subrule 118.16(5), and shall not be canceled, revoked, disbursed, released, or allowed to terminate without the approval of the department. Financial assurance may be provided by cash in the form of a secured trust fund or local government dedicated fund, surety bond, letter of credit, or corporate or local government guarantee, as follows:

a. Secured trust fund. The owner or operator of an appliance demanufacturing facility or an entity serving as a guarantor may demonstrate financial assurance for closure by establishing a secured trust fund that conforms to the requirements of this paragraph.

(1) The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. The fund shall be restricted for the sole purpose of funding closure activities

at the facility and a copy of the trust agreement must be submitted to the department and placed in the facility's official files.

(2) A secured trust fund shall name the department of natural resources as the entity authorized to draw funds from the trust, subject to proper notification to the trust officer of failure by the permittee to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

(3) Money in the fund shall not be assigned for the benefit of creditors with the exception of the state.

(4) Money in the fund shall not be used to pay any final judgment against a permit holder arising out of the ownership or operation of the site during its active life or after closure.

(5) The owner or operator, or other person authorized to conduct closure activities may request reimbursement from the trustee for closure expenditures as they are incurred. Requests for reimbursement shall be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure and if documentation of the justification for reimbursement has been submitted to the department for prior approval.

(6) If the balance of the trust fund exceeds the current cost estimate for closure at any time, the owner or operator may request withdrawal of the excess funds from the trustee so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

b. Local government dedicated fund. The owner or operator of a publicly owned appliance demanufacturing facility or local government serving as a guarantor may demonstrate financial assurance for closure by establishing a dedicated fund that conforms to the requirements of this paragraph.

(1) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, resolution or order as a restricted fund to pay for closure costs arising from the operation of the facility.

(2) A copy of the document establishing the dedicated fund must be submitted to the department and placed in the facility's official files.

(3) If the balance of the dedicated fund exceeds the current cost estimate for closure at any time, the owner or operator may withdraw excess funds so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

c. Surety bond. A surety bond must be written by a company authorized by the commissioner of insurance to do business in the state, and the surety bond shall comply with the following:

(1) The bond shall be in a form approved by the commissioner of insurance and shall be payable to the department of natural resources.

(2) The bond shall be specific to a particular facility for the purpose of properly disposing of any appliances, refrigerant, PCBs, mercury and any other hazardous materials associated with appliance demanufacturing that may remain on site due to the owner's or operator's failure to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

(3) The owner or operator shall provide the department with a statement from the surety with each permit application renewal, noting that the bond is paid and current for the permit period for which the owner or operator has applied for renewal.

d. Letter of credit. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency.

(1) The owner or operator must submit to the department a copy of the letter of credit and place a copy in the facility's official files.

(2) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the name and address of the facility, and the amount of funds assured, must be included with the letter of credit submitted to the department and placed in the facility's files.

(3) The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the department 90 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the letter of credit into a secured trust fund that meets the requirements of paragraph 118.16(6)"a." If the owner or operator has not complied with this subrule within the 60-day time period, the issuer of the letter of credit shall deposit a sum equal to the amount of the letter of credit into the secured trust fund established by the owner or operator. The provision of funds by the issuer of the letter of credit shall be considered an issuance of a loan to the owner or operator, and the terms of that loan shall be governed by the letter of credit or subsequent agreement between those parties. The state shall not be considered a party to this credit transaction.

e. Corporate guarantee. An owner or operator may meet the requirements of this rule by obtaining a written guarantee. The guarantor must meet be the direct or higher-tier parent corporation of the owner or operator, an owner or operator whose parent corporation is also the parent corporation of the owner or operator, or an owner or operator with a "substantial business relationship'' with the owner or operator.

(1) The terms of the written guarantee must provide that within 30 days of the owner's or operator's failure to perform closure of a facility covered by the guarantee, the guarantor will:

1. Perform, or pay a third party to perform closure as required (performance guarantee);

2. Establish a fully funded secured trust fund as specified in paragraph 118.16(6)"a" in the name of the owner or operator (payment guarantee); or

3. Establish an alternative financial assurance instrument in the name of the owner or operator as required by this rule.

(2) The guarantor must satisfy one of the following three conditions:

1. A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard & Poor's or Aaa, Aa, A or Baa as issued by Moody's; or

2. A ratio of less than 1.5 comparing total liabilities to net worth; or

3. A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus $10 million, to total liabilities;

(3) The tangible net worth of the guarantor must be greater than the sum of the current closure cost estimate and any other environmental obligations, including other financial assurance guarantees.

(4) The guarantor must have assets amounting to at least the sum of current closure cost estimate and any other environmental obligations, including other financial assurance guarantees.

(5) Record-keeping and reporting requirements. The guarantor must submit the following records to the department and place a copy in the facility's official files:

1. A copy of the written guarantee between the owner or operator and the guarantor;

2. A letter signed by a certified public accountant and based upon a certified audit that:

• Lists all the current cost estimates covered by a guarantee including, but not limited to, cost estimates required by subrule 118.16(5); cost estimates required for municipal solid waste management facilities pursuant to 40 CFR Part 258; cost estimates required for UIC facilities under 40 CFR Part 144, if applicable; cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable; cost estimates required for PCB storage facilities under 40 CFR Part 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable; and

• Provides evidence demonstrating that the guarantor meets the conditions of subparagraphs 118.16(6)"e"(2), (3) and (4).

3. A copy of the independent certified public accountant's unqualified opinion of the guarantor's financial statements for the latest completed fiscal year. To be eligible to use the guarantee, the guarantor's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion or disclaimer of opinion shall be cause for disallowance of this instrument. A qualified opinion related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance. If the department does not allow use of the corporate guarantee, the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

f. Local government guarantee. An owner or operator may demonstrate financial assurance for closure by obtaining a written guarantee provided by a local government or jointly provided by the members of an agency established pursuant to Iowa Code chapter 28E.

(1) The terms of the written guarantee must provide that within 30 days of the owner's or operator's failure to perform closure of a facility covered by the guarantee, the guarantor will:

1. Perform, or pay a third party to perform closure as required (performance guarantee);

2. Establish a fully funded secured trust fund as specified in paragraph 118.16(6)“a” in the name of the owner or operator (payment guarantee); or

3. Establish an alternative financial assurance instrument in the name of the owner or operator as required by this rule.

(2) The guarantor must satisfy one of the following requirements:

1. If the guarantor has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, the guarantor must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody’s, or AAA, AA, A, or BBB, as issued by Standard & Poor’s on all such general obligation bonds; or

2. The guarantor must satisfy each of the following financial ratios based on the guarantor’s most recent audited annual financial statement: a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05, and a ratio of annual debt service to total expenditures less than or equal to 0.20.

(3) The guarantor must prepare its financial statements in conformity with Generally Accepted Accounting Principles or Other Comprehensive Bases of Accounting and have its financial statements audited by an independent certified public accountant or the office of the auditor of the state of Iowa. The financial statement shall be in the form prescribed by the office of the auditor of the state of Iowa.

(4) A guarantor is not eligible to assure its obligations if it:

1. Is currently in default on any outstanding general obligation bonds; or

2. Has any outstanding general obligation bonds rated lower than Baa as issued by Moody’s or BBB as issued by Standard & Poor’s; or

3. Operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or

4. Receives an adverse opinion or disclaimer of opinion from the independent certified public accountant or office of the auditor of the state of Iowa auditing its financial statement. A qualified opinion that is related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance of this mechanism.

5. The closure costs to be assured are greater than 43 percent of the guarantor’s total annual revenue.

(5) The local government guarantor must include disclosure of the closure costs assured through the guarantee in its next annual audit report prior to the initial receipt of appliances at the facility or prior to cancellation of an alternative financial assurance instrument, whichever is later. For the first year the guarantee is used to assure costs at a particular facility, the reference may instead be placed in the guarantor’s official files until issuance of the next available annual audit report if timing does not permit the reference to be incorporated into the most recently issued annual audit report or budget. For closure costs, conformance with Governmental Accounting Standards Board Statement 18 ensures compliance with this public notice component.

(6) The local government owner or operator must submit to the department the following items:

1. A copy of the written guarantee between the owner or operator and the local government serving as guarantor for the closure costs at the facility.

2. A copy of the guarantor's most recent annual financial audit report indicating compliance with the financial ratios required by the second numbered paragraph of subparagraph 118.16(6)"f"(2), if applicable, and the requirements of subparagraphs 118.16(6)"f"(3) and (4).

3. A letter signed by the local government's chief financial officer that lists all the current cost estimates covered by the guarantor, as described in subrule 118.16(5); and provides evidence and certifies that the local government meets the conditions of subparagraphs 118.16(6)"f"(2), (3), (4) and (5).

118.16(7) Financial assurance cancellation and permit suspension.

a. A financial assurance instrument may be terminated by the owner or operator only if the owner or operator substitutes alternate financial assurance prior to cancellation, as specified in this rule or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

b. A financial assurance instrument shall be continuous in nature until canceled by the financial assurance provider or until the department gives written notification to the owner, operator, and financial assurance provider that the covered site has been properly closed. The financial assurance provider shall provide at least 90 days' notice in writing to the owner or operator and the department in the event of any intent to cancel the instrument.

c. Within 60 days of receipt of a written notice of cancellation of financial assurance by the financial assurance provider, the owner or operator must provide the department an alternative financial assurance instrument. If a means of continued financial assurance is not provided within that 60 days, the department shall suspend the permit.

d. The owner or operator shall perform proper closure within 30 days of the permit suspension. For the purpose of this rule, proper closure means completion of all items pursuant to rule 118.14(455B,455D) and subrule 118.16(5).

e. If the owner or operator does not properly close the site within the 30-day period allowed, the department shall file a claim with the financial assurance instrument provider to collect the amount of funds necessary to properly close the site.

f. An owner or operator who elects to terminate a permitted activity, or whose renewal application has been denied, or whose permit has been suspended or revoked for cause, must submit within 30 days of the termination of the permit a schedule for completing proper closure of the terminated activity. Closure completion cannot exceed 60 days from the date of termination of the permit.

g. The director may also request payment from any financial assurance provider to provide for the purpose of completing closure when the following circumstances exist:

(1) The owner or operator is more than 15 days late in providing a schedule for closure or for meeting any date in the schedule for closure.

(2) The owner or operator declares an economic inability to comply with this rule, either by sending written notification to the director or through an action such as, but not limited to, filing for bankruptcy.

ITEM 9. Amend 567—Chapter 120 by adopting the following **new** rule:

567—120.13(455B,455D) Financial assurance requirements for multiuse and single–use landfarms. The holder of a sanitary disposal project permit for a multiuse or single–use landfarm must obtain and submit a financial assurance instrument to the department in accordance with this rule. The financial assurance instrument shall provide monetary funds for the purpose of conducting closure activities at the operating area(s) due to the permit holder's failure to properly close the site as required in accordance with rule 120.12(455B) within 30 days of permit suspension, termination, revocation, or expiration.

120.13(1) No permit without financial assurance. A permit shall not be issued or renewed to the owner or operator of a multiuse or single-use landfarm until a financial assurance instrument has been submitted to and approved by the department.

120.13(2) Proof of compliance. Proof of the establishment of the financial assurance instrument and compliance with this rule, including a current closure cost estimate, shall be submitted by July 1, 2008 or at the time of application for a permit for a new multiuse or single-use landfarm. The owner or operator must provide continuous coverage for closure and submit proof of compliance, including an updated closure cost estimate, with each permit renewal thereafter until released from this requirement by the department.

120.13(3) Financial assurance amounts required. The estimate submitted to the department must be certified by a professional engineer and account for at least the following factors determined by the department to be minimal necessary costs for closure pursuant to rule 120.12(455B):

a. Third party costs to conduct groundwater and soil sampling and properly clean all equipment and storage areas at the operating area(s).

b. If PCS is temporarily stored on site prior to incorporation, then this estimate shall include third party labor and transportation costs and total tip fees to properly dispose of all PCS equal to the maximum storage capacity on site.

120.13(4) Acceptable financial assurance instruments. The financial assurance instrument shall be established in an amount equal to the cost estimate prepared in accordance with subrule 120.13(3), and shall not be canceled, revoked, disbursed, released, or allowed to terminate without the approval of the department. Financial assurance may be provided by cash in the form of a secured trust fund or local government dedicated fund, surety bond, letter of credit, or corporate or local government guarantee, as follows:

a. Secured trust fund. The owner or operator of a landfarm or entity serving as a guarantor may demonstrate financial assurance for closure by establishing a secured trust fund that conforms to the requirements of this paragraph.

(1) The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. The fund shall be restricted for the sole purpose of funding closure activities at the landfarm sites and a copy of the trust agreement must be submitted to the department and placed in the permit holder's official files.

(2) A secured trust fund shall name the department of natural resources as the entity authorized to draw funds from the trust, subject to proper notification to the trust officer of failure by the permittee to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

(3) Money in the fund shall not be assigned for the benefit of creditors with the exception of the state.

(4) Money in the fund shall not be used to pay any final judgment against a permit holder arising out of the ownership or operation of the site during its active life or after closure.

(5) The owner or operator, or other person authorized to conduct closure activities may request reimbursement from the trustee for closure expenditures as they are incurred. Requests for reimbursement shall be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure and if documentation of the justification for reimbursement has been submitted to the department for prior approval.

(6) If the balance of the trust fund exceeds the current cost estimate for closure at any time, the owner or operator may request withdrawal of the excess funds from the trustee so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

b. Local government dedicated fund. The owner or operator of a publicly owned entity permitted to landfarm PCS or local government serving as a guarantor may demonstrate financial assurance for closure by establishing a dedicated fund that conforms to the requirements of this paragraph.

(1) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, resolution or order as a restricted fund to pay for closure costs arising from the operation of the landfarm site(s).

(2) A copy of the document establishing the dedicated fund must be submitted to the department and placed in the permit holder's official files.

(3) If the balance of the dedicated fund exceeds the current cost estimate for closure at any time, the owner or operator may withdraw excess funds so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

c. Surety bond. A surety bond must be written by a company authorized by the commissioner of insurance to do business in the state, and the surety bond shall comply with the following:

(1) The bond shall be in a form approved by the commissioner of insurance and shall be payable to the department of natural resources.

(2) The bond shall be specific to a particular landfarm owner or operator for the purpose of funding closure in accordance with rule 120.12 and removing any stockpiled PCS that may remain at the site(s) due to the owner's or operator's failure to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

(3) The owner or operator shall provide the department with a statement from the surety with each permit application renewal, noting that the bond is paid and current for the permit period for which the owner or operator has applied for renewal.

d. Letter of credit. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency.

(1) The owner or operator must submit to the department a copy of the letter of credit and place a copy in the permit holder's official files.

(2) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the name and address of the permit holder, and the amount of funds assured, must be included with the letter of credit submitted to the department and placed in the permit holder's files.

(3) The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the department 90 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the letter of credit into a secured trust fund that meets the requirements of paragraph 120.13(4)"a." If the owner or operator has not complied with this subrule within the 60-day time period, the issuer of the letter of credit shall deposit a sum equal to the amount of the letter of credit into the secured trust fund established by the owner or operator. The provision of funds by the issuer of the letter of credit shall be considered an issuance of a loan to the owner or operator, and the terms of that loan shall be governed by the letter of credit or subsequent agreement between those parties. The state shall not be considered a party to this credit transaction.

e. Corporate guarantee. An owner or operator may meet the requirements of this rule by obtaining a written guarantee. The guarantor must meet be the direct or higher-tier parent corporation of the owner or operator, an owner or operator whose parent corporation is also the parent corporation of the owner or operator, or an owner or operator with a "substantial business relationship'' with the owner or operator.

(1) The terms of the written guarantee must provide that within 30 days of the owner's or operator's failure to perform closure of a landfarm site(s) covered by the guarantee, the guarantor will:

1. Perform, or pay a third party to perform closure as required (performance guarantee);

2. Establish a fully funded secured trust fund as specified in paragraph 120.13(4)"a" in the name of the owner or operator (payment guarantee); or

3. Establish an alternative financial assurance instrument in the name of the owner or operator as required by this rule.

(2) The guarantor must satisfy one of the following three conditions:

1. A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard & Poor's or Aaa, Aa, A or Baa as issued by Moody's; or

2. A ratio of less than 1.5 comparing total liabilities to net worth; or

3. A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus $10 million, to total liabilities;

(3) The tangible net worth of the guarantor must be greater than the sum of the current closure cost estimate and any other environmental obligations, including other financial assurance guarantees.

(4) The guarantor must have assets amounting to at least the sum of current closure cost estimate and any other environmental obligations, including other financial assurance guarantees.

(5) Record-keeping and reporting requirements. The guarantor must submit the following records to the department and place a copy in the permit holder's official files:

1. A copy of the written guarantee between the owner or operator and the guarantor;

2. A letter signed by a certified public accountant and based upon a certified audit that:

• Lists all the current cost estimates covered by a guarantee including, but not limited to, cost estimates required by subrule 120.13(3); cost estimates required for municipal solid waste management facilities pursuant to 40 CFR Part 258; cost estimates required for UIC facilities under 40 CFR Part 144, if applicable; cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable; cost estimates required for PCB storage facilities under 40 CFR Part 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable; and

• Provides evidence demonstrating that the guarantor meets the conditions of subparagraphs 120.13(4)"e"(2), (3) and (4).

3. A copy of the independent certified public accountant's unqualified opinion of the guarantor's financial statements for the latest completed fiscal year. To be eligible to use the guarantee, the guarantor's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion or disclaimer of opinion shall be cause for disallowance of this instrument. A qualified opinion related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance. If the department does not allow use of the corporate guarantee, the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

f. Local government guarantee. An owner or operator may demonstrate financial assurance for closure by obtaining a written guarantee provided by a local government or jointly provided by the members of an agency established pursuant to Iowa Code chapter 28E.

(1) The terms of the written guarantee must provide that within 30 days of the owner's or operator's failure to perform closure of a landfarm site(s) covered by the guarantee, the guarantor will:

1. Perform, or pay a third party to perform closure as required (performance guarantee);

2. Establish a fully funded secured trust fund as specified in paragraph 120.13(4)"a" in the name of the owner or operator (payment guarantee); or

3. Establish an alternative financial assurance instrument in the name of the owner or operator as required by this rule.

(2) The guarantor must satisfy one of the following requirements:

1. If the guarantor has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, the guarantor must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard & Poor's on all such general obligation bonds; or

2. The guarantor must satisfy each of the following financial ratios based on the guarantor's most recent audited annual financial statement: a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05, and a ratio of annual debt service to total expenditures less than or equal to 0.20.

(3) The guarantor must prepare its financial statements in conformity with Generally Accepted Accounting Principles or Other Comprehensive Bases of Accounting and have its financial statements audited by an independent certified public accountant or the office of the auditor of the state of Iowa. The financial statement shall be in the form prescribed by the office of the auditor of the state of Iowa.

(4) A guarantor is not eligible to assure its obligations if it:

1. Is currently in default on any outstanding general obligation bonds; or

2. Has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard & Poor's; or

3. Operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or

4. Receives an adverse opinion or disclaimer of opinion from the independent certified public accountant or office of the auditor of the state of Iowa auditing its financial statement. A qualified opinion that is related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance of this mechanism.

5. The closure costs to be assured are greater than 43 percent of the guarantor's total annual revenue.

(5) The local government guarantor must include disclosure of the closure costs assured through the guarantee in its next annual audit report prior to the initial application of PCS at the landfarm site(s) or prior to cancellation of an alternative financial assurance instrument, whichever is later. For the first year the guarantee is used to assure costs at a particular site(s), the reference may instead be placed in the guarantor's official files until issuance of the next available annual audit report if timing does not permit the reference to be incorporated into the most recently issued annual audit report or budget. For closure costs, conformance with Government Accounting Standards Board Statement 18 ensures compliance with this public notice component.

(6) The local government owner or operator must submit to the department the following items:

1. A copy of the written guarantee between the owner or operator and the local government serving as guarantor for the closure costs at the landfarm site(s).

2. A copy of the guarantor's most recent annual financial audit report indicating compliance with the financial ratios required by the second numbered paragraph of subparagraph 120.13(4)"f"(2), if applicable, and the requirements of subparagraphs 120.13(4)"f"(3) and (4).

3. A letter signed by the local government's chief financial officer that lists all the current cost estimates covered by the guarantor, as described in subrule 120.13(3); and provides evidence and certifies that the local government meets the conditions of subparagraphs 120.13(4)"f"(2), (3), (4) and (5).

120.13(5) Financial assurance cancellation and permit suspension.

a. A financial assurance instrument may be terminated by the owner or operator only if the owner or operator substitutes alternate financial assurance prior to cancellation, as specified in this rule or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

b. A financial assurance instrument shall be continuous in nature until canceled by the financial assurance provider or until the department gives written notification to the owner, operator, and financial assurance provider that the covered site has been properly closed. The financial assurance provider shall provide at least 90 days' notice in writing to the owner or operator and the department in the event of any intent to cancel the instrument.

c. Within 60 days of receipt of a written notice of cancellation of financial assurance by the financial assurance provider, the owner or operator must provide the department an alternative financial assurance instrument. If a means of continued financial assurance is not provided within that 60 days, the department shall suspend the permit.

d. The owner or operator shall perform proper closure within 30 days of the permit suspension. For the purpose of this rule, proper closure means completion of all items pursuant to rule 102.12(455B) and subrule 120.13(3).

e. If the owner or operator does not properly close the site within the 30-day period allowed, the department shall file a claim with the financial assurance instrument provider to collect the amount of funds necessary to properly close the site.

f. An owner or operator who elects to terminate a permitted activity, or whose renewal application has been denied, or whose permit has been suspended or revoked for cause, must submit within 30 days of the termination of the permit a schedule for completing proper closure of the terminated activity. Closure completion cannot exceed 60 days from the date of termination of the permit.

g. The director may also request payment from any financial assurance provider to provide for the purpose of completing closure when the following circumstances exist:

(1) The owner or operator is more than 15 days late in providing a schedule for closure or for meeting any date in the schedule for closure.

(2) The owner or operator declares an economic inability to comply with this rule, either by sending written notification to the director or through an action such as, but not limited to, filing for bankruptcy.

ITEM 10. Amend 567—Chapter 121 by adopting the following **new** rule:

567—121.8(455B,455D) Financial assurance requirements for land application of wastes. The holder of a sanitary disposal project permit for the land application of solid wastes that has received authorization to temporarily store waste at the application site(s) must obtain and submit a financial assurance instrument to the department in accordance with this rule. The financial assurance instrument shall provide monetary funds for the purpose of properly disposing of or having a third party land apply any stored solid wastes due to the permit holder's failure to properly land apply wastes in accordance with rule 121.7(455B) and the applicable permit provisions.

121.8(1) No permit without financial assurance. A permit shall not be issued or renewed to the owner or operator until a financial assurance instrument has been submitted to and approved by the department.

121.8(2) Proof of compliance. Proof of the establishment of the financial assurance instrument and compliance with this rule, including a current closure cost estimate, shall be submitted by July 1, 2008 or at the time of application for a permit to land apply solid wastes. The owner or operator must provide continuous coverage for closure and submit proof of compliance, including an updated closure cost estimate, with each permit renewal thereafter until released from this requirement by the department.

121.8(3) Financial assurance amounts required. The estimate submitted to the department must be certified by a professional engineer and account for at least the following factors determined by the department to be minimal necessary costs for closure:

a. Third party labor and transportation costs and total tip fees to properly dispose of all solid wastes equal to the maximum storage capacity of all approved storage areas, or

b. Third party labor costs to land apply all solid wastes equal to the maximum storage capacity of all approved storage areas.

121.8(4) Acceptable financial assurance instruments. The financial assurance instrument shall be established in an amount equal to the cost estimate prepared in accordance with subrule 121.8(3), and shall not be canceled, revoked, disbursed, released, or allowed to terminate without the approval of the department. Financial assurance may be provided by cash in the form of a secured trust fund or local government dedicated fund, surety bond, letter of credit, or corporate or local government guarantee, as follows:

a. Secured trust fund. The owner or operator or entity serving as a guarantor may demonstrate financial assurance for closure by establishing a secured trust fund that conforms to the requirements of this paragraph.

(1) The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. The fund shall be restricted for the sole purpose of funding closure activities at the land application site(s) and a copy of the trust agreement must be submitted to the department and placed in the permit holder's official files.

(2) A secured trust fund shall name the department of natural resources as the entity authorized to draw funds from the trust, subject to proper notification to the trust officer of failure by the permittee to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

(3) Money in the fund shall not be assigned for the benefit of creditors with the exception of the state.

(4) Money in the fund shall not be used to pay any final judgment against a permit holder arising out of the ownership or operation of the site during its active life or after closure.

(5) The owner or operator, or other person authorized to conduct closure activities may request reimbursement from the trustee for closure expenditures as they are incurred. Requests for reimbursement shall be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure and if documentation of the justification for reimbursement has been submitted to the department for prior approval.

(6) If the balance of the trust fund exceeds the current cost estimate for closure at any time, the owner or operator may request withdrawal of the excess funds from the trustee so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

b. Local government dedicated fund. The owner or operator of a publicly owned entity permitted to land apply solid waste or local government serving as a guarantor may demonstrate financial assurance for closure by establishing a dedicated fund that conforms to the requirements of this paragraph.

(1) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, resolution or order as a restricted fund to pay for closure costs arising from the operation of the land application sites.

(2) A copy of the document establishing the dedicated fund must be submitted to the department and placed in the permit holder's official files.

(3) If the balance of the dedicated fund exceeds the current cost estimate for closure at any time, the owner or operator may request withdraw excess funds so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

c. Surety bond. A surety bond must be written by a company authorized by the commissioner of insurance to do business in the state, and the surety bond shall comply with the following:

(1) The bond shall be in a form approved by the commissioner of insurance and shall be payable to the department of natural resources.

(2) The bond shall be specific to a particular land application site(s) for the purpose of funding closure in accordance with rule 121.8(3) and removing any stockpiled solid wastes that may remain on site due to the owner's or operator's failure to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

(3) The owner or operator shall provide the department with a statement from the surety with each permit application renewal, noting that the bond is paid and current for the permit period for which the owner or operator has applied for renewal.

d. Letter of credit. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency.

(1) The owner or operator must submit to the department a copy of the letter of credit and place a copy in the permit holder's official files.

(2) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the name and address of the permit holder, and the amount of funds assured, must be included with the letter of credit submitted to the department and placed in the permit holder's files.

(3) The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the department 90 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the letter of credit into a secured trust fund that meets the requirements of paragraph 121.8(4)"a." If the owner or operator has not complied with this subrule within the 60-day time period, the issuer of the letter of credit shall deposit a sum equal to the amount of the letter of credit into the secured trust fund established by the owner or operator. The provision of funds by the issuer of the letter of credit shall be considered an issuance of a loan to the owner or operator, and the terms of that loan shall be governed by the letter of credit or subsequent agreement between those parties. The state shall not be considered a party to this credit transaction.

e. Corporate guarantee. An owner or operator may meet the requirements of this rule by obtaining a written guarantee. The guarantor must meet be the direct or higher-tier parent corporation of the owner or operator, an owner or operator whose parent corporation is also the parent corporation of the owner or operator, or an owner or operator with a "substantial business relationship'' with the owner or operator.

(1) The terms of the written guarantee must provide that within 30 days of the owner's or operator's failure to perform closure of a land application site(s) covered by the guarantee, the guarantor will:

1. Perform, or pay a third party to perform closure as required (performance guarantee);

2. Establish a fully funded secured trust fund as specified in paragraph 121.8(4)"a" in the name of the owner or operator (payment guarantee); or

3. Establish an alternative financial assurance instrument in the name of the owner or operator as required by this rule.

(2) The guarantor must satisfy one of the following three conditions:

1. A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard & Poor's or Aaa, Aa, A or Baa as issued by Moody's; or

2. A ratio of less than 1.5 comparing total liabilities to net worth; or

3. A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus $10 million, to total liabilities;

(3) The tangible net worth of the guarantor must be greater than the sum of the current closure cost estimate and any other environmental obligations, including other financial assurance guarantees.

(4) The guarantor must have assets amounting to at least the sum of current closure cost estimate and any other environmental obligations, including other financial assurance guarantees.

(5) Record-keeping and reporting requirements. The guarantor must submit the following records to the department and place a copy in the permit holder's official files:

1. A copy of the written guarantee between the owner or operator and the guarantor;

2. A letter signed by a certified public accountant and based upon a certified audit that:

• Lists all the current cost estimates covered by a guarantee including, but not limited to, cost estimates required by subrule 121.8(3); cost estimates required for municipal solid waste management facilities pursuant to 40 CFR Part 258; cost estimates required for UIC facilities under 40 CFR Part 144, if applicable; cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable; cost estimates required for PCB storage facilities under 40 CFR Part 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable; and

• Provides evidence demonstrating that the guarantor meets the conditions of subparagraphs 121.8(4)"e"(2), (3) and (4).

3. A copy of the independent certified public accountant's unqualified opinion of the guarantor's financial statements for the latest completed fiscal year. To be eligible to use the guarantee, the guarantor's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion or disclaimer of opinion shall be cause for disallowance of this instrument. A qualified opinion related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance. If the department does not allow use of the corporate guarantee, the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

f. Local government guarantee. An owner or operator may demonstrate financial assurance for closure by obtaining a written guarantee provided by a local government or jointly provided by the members of an agency established pursuant to Iowa Code chapter 28E.

(1) The terms of the written guarantee must provide that within 30 days of the owner's or operator's failure to perform closure of a land application site(s) covered by the guarantee, the guarantor will:

1. Perform, or pay a third party to perform closure as required (performance guarantee);

2. Establish a fully funded secured trust fund as specified in paragraph 121.8(4)"a" in the name of the owner or operator (payment guarantee); or

3. Establish an alternative financial assurance instrument in the name of the owner or operator as required by this rule.

(2) The guarantor must satisfy one of the following requirements:

1. If the guarantor has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, the guarantor must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard & Poor's on all such general obligation bonds; or

2. The guarantor must satisfy each of the following financial ratios based on the guarantor's most recent audited annual financial statement: a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05, and a ratio of annual debt service to total expenditures less than or equal to 0.20.

(3) The guarantor must prepare its financial statements in conformity with Generally Accepted Accounting Principles or Other Comprehensive Bases of Accounting and have its financial statements audited by an independent certified public accountant or the office of the auditor of the state of Iowa. The financial statement shall be in the form prescribed by the office of the auditor of the state of Iowa.

(4) A guarantor is not eligible to assure its obligations if it:

1. Is currently in default on any outstanding general obligation bonds; or

2. Has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard & Poor's; or

3. Operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or

4. Receives an adverse opinion or disclaimer of opinion from the independent certified public accountant or office of the auditor of the state of Iowa auditing its financial statement. A qualified opinion that is related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance of this mechanism.

5. The closure costs to be assured are greater than 43 percent of the guarantor's total annual revenue.

(5) The local government guarantor must include disclosure of the closure costs assured through the guarantee in its next annual audit report prior to the initial application of waste at the land application site(s) or prior to cancellation of an alternative financial assurance instrument, whichever is later. For the first year the guarantee is used to assure costs at a particular land application site(s), the reference may instead be placed in the guarantor's official files until issuance of the next available annual audit report if timing does not permit the reference to be incorporated into the most recently issued annual audit report or budget. For closure costs, conformance with Government Accounting Standards Board Statement 18 ensures compliance with this public notice component.

(6) The local government owner or operator must submit to the department the following items:

1. A copy of the written guarantee between the owner or operator and the local government serving as guarantor for the closure costs at the land application sites.

2. A copy of the guarantor's most recent annual financial audit report indicating compliance with the financial ratios required by the second numbered paragraph of subparagraph 121.8(4)"f"(2), if applicable, and the requirements of subparagraphs 121.8(4)"f"(3) and (4).

3. A letter signed by the local government's chief financial officer that lists all the current cost estimates covered by the guarantor, as described in subrule 121.8(3); and provides evidence and certifies that the local government meets the conditions of subparagraphs 121.8(4)"f"(2), (3), (4) and (5).

121.8(5) Financial assurance cancellation and permit suspension.

a. A financial assurance instrument may be terminated by the owner or operator only if the owner or operator substitutes alternate financial assurance prior to cancellation, as specified in this rule or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

b. A financial assurance instrument shall be continuous in nature until canceled by the financial assurance provider or until the department gives written notification to the owner, operator, and financial assurance provider that the covered site has been properly closed. The financial assurance provider shall provide at least 90 days' notice in writing to the owner or operator and the department in the event of any intent to cancel the instrument.

c. Within 60 days of receipt of a written notice of cancellation of financial assurance by the financial assurance provider, the owner or operator must provide the department an alternative financial assurance instrument. If a means of continued financial assurance is not provided within that 60 days, the department shall suspend the permit.

d. The owner or operator shall perform proper closure within 30 days of the permit suspension. For the purpose of this rule, proper closure means completion of all items pursuant to subrule 121.8(3).

e. If the owner or operator does not properly close the site within the 30-day period allowed, the department shall file a claim with the financial assurance instrument provider to collect the amount of funds necessary to properly close the site.

f. An owner or operator who elects to terminate a permitted activity, or whose renewal application has been denied, or whose permit has been suspended or revoked for cause, must submit within 30 days of the termination of the permit a schedule for completing proper closure of the terminated activity. Closure completion cannot exceed 60 days from the date of termination of the permit.

g. The director may also request payment from any financial assurance provider to provide for the purpose of completing closure when the following circumstances exist:

(1) The owner or operator is more than 15 days late in providing a schedule for closure or for meeting any date in the schedule for closure.

(2) The owner or operator declares an economic inability to comply with this rule, either by sending written notification to the director or through an action such as, but not limited to, filing for bankruptcy.

ITEM 11. Amend 567—Chapter 122 as follows:

Amend rule 567—122.8(455B,455D) as follows:

567—122.8(455B,455D) Operational requirements for CRT collection facilities. All CRT collection shall be done in a manner that complies with the following requirements. So long as this rule is complied with, the only rules within

this chapter that shall apply to the permitted activity are rules 122.1(455B,455D) to 122.3(455B,455D), 122.6(455B,455D), 122.7(455B,455D), 122.9(455B,455D), 122.10(455B,455D), and this rule.

122.8(1) CRT storage at a permitted collection site shall be limited to 48 Gaylord boxes or equivalent containing no more than 2,000 CRTs. A permitted CRT collection site may store additional CRTs subject to the permit holder's obtaining and maintaining financial assurance for these additional CRTs in accordance with rule 122.28(455B,455D).

122.8(2) Collection activities for discarded CRTs shall occur in an area and through a process that minimizes the risk of hazardous conditions.

122.8(3) Any hazardous condition shall immediately be contained and remedied with proper equipment and procedures.

122.8(4) Discarded CRTs shall be collected and contained in a manner that is structurally adequate to prevent breakage and spillage under normal operating conditions, and that is compatible with the contents.

122.8(5) CRT glass and CRTs that show evidence of breakage, leakage, or damage that could cause the release of lead or other hazardous constituents into the environment shall be collected in enclosed and separate containers from other discarded CRTs. Such containers shall be protected from precipitation.

122.8(6) A CRT recycling facility may store discarded CRTs and materials derived from discarded CRTs outdoors if the following conditions are met:

a. The facility has a stormwater permit, if applicable.

b. The material is not harboring or attracting vectors.

c. Litter is contained within the storage area or unit.

d. The discarded CRTs and materials derived from discarded CRTs are not broken CRTs or CRT glass.

122.8(7) Discarded CRTs and materials derived from discarded CRTs shall not be speculatively accumulated at a permitted CRT recycling facility without the permit holder's obtaining and maintaining financial assurance for the additional CRTs in accordance with rule 122.2~~9~~8(455B). Speculative accumulation occurs when a facility cannot demonstrate that the amount of discarded CRTs leaving the facility within a 12–month time period is greater than 75 percent, by weight or volume, of the discarded CRTs and materials derived from discarded CRTs received by the facility within a 12–month time period.

122.8(8) Containers or packages shall be labeled and transported in compliance with state and federal Department of Transportation (DOT) regulations.

Adopt the following **new** rule~~s~~ 567—122.28(455B,455D):

567—122.28(455B,455D) Financial assurance requirements for cathode ray tube collection and recycling facilities. Permitted CRT collection and recycling facilities must obtain and submit a financial assurance instrument to the department for the storage of solid waste, discarded CRTs and materials derived from discarded CRTs at the site in accordance with this rule. The financial assurance instrument shall provide monetary funds to properly dispose of solid

waste, discarded CRTs and materials derived from discarded CRTs that may remain at a site due to the owner's or operator's failure to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

122.28(1) No permit without financial assurance. A permit shall not be issued or renewed to the owner or operator of a CRT collection or recycling facility until a financial assurance instrument has been submitted to and approved by the department.

122.28(2) Proof of compliance. Proof of the establishment of the financial assurance instrument and compliance with this rule, including a current closure cost estimate, shall be submitted to the department by July 1, 2008, or at the time of application for a permit for a new CRT collection or recycling facility. The owner or operator must provide continuous coverage for closure and submit proof of compliance, including an updated closure cost estimate, with each permit renewal thereafter until released from this requirement by the department.

122.28(3) Use of one financial assurance instrument for multiple permitted activities. CRT collection or recycling facilities required to maintain financial assurance pursuant to any other provisions of 567-Chapters 100 to 123 may satisfy the requirements of this rule by the use of one financial assurance instrument if the permit holder ensures that the instrument provides financial assurance for an amount at least equal to the current cost estimates for closure of all sanitary disposal project activities covered.

122.28(4) The estimate submitted to the department must account for at least the following factors determined by the department to be minimal necessary costs for closure pursuant to rule 122.27(455B,455D):

a. CRT collection facilities shall have financial assurance coverage equal to one dollar per pound stored above the permitted storage capacity of 48 Gaylord boxes containing no more than 2,000 CRTs, in accordance with subrule 122.8(1).

b. CRT recycling facilities shall have financial assurance coverage equal to one dollar per pound of CRTs determined to be speculatively accumulated in accordance with subrule 122.8(7).

122.28(5) Acceptable financial assurance instruments. The financial assurance instrument shall be established in an amount equal to the cost estimate prepared in accordance with subrule 122.28(4), and shall not be canceled, revoked, disbursed, released, or allowed to terminate without the approval of the department. Financial assurance may be provided by cash in the form of a secured trust fund or local government dedicated fund, surety bond, letter of credit, or corporate or local government guarantee, as follows:

a. Secured trust fund. The owner or operator of a CRT collection or recycling facility or an entity serving as a guarantor may demonstrate financial assurance for closure by establishing a secured trust fund that conforms to the requirements of this paragraph.

(1) The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. The fund shall be restricted for the sole purpose of funding closure activities at the facility and a copy of the trust agreement must be submitted to the department and placed in the facility's official files.

(2) A secured trust fund shall name the department of natural resources as the entity authorized to draw funds from the trust, subject to proper notification to the trust officer of failure by the permittee to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

(3) Money in the fund shall not be assigned for the benefit of creditors with the exception of the state.

(4) Money in the fund shall not be used to pay any final judgment against a permit holder arising out of the ownership or operation of the site during its active life or after closure.

(5) The owner or operator, or other person authorized to conduct closure activities may request reimbursement from the trustee for closure expenditures as they are incurred. Requests for reimbursement shall be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure and if documentation of the justification for reimbursement has been submitted to the department for prior approval.

(6) If the balance of the trust fund exceeds the current cost estimate for closure at any time, the owner or operator may request withdrawal of the excess funds from the trustee so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

b. Local government dedicated fund. The owner or operator of a publicly owned CRT collection or recycling facility or local government serving as a guarantor may demonstrate financial assurance for closure by establishing a dedicated fund that conforms to the requirements of this paragraph.

(1) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, resolution or order as a restricted fund to pay for closure costs arising from the operation of the facility.

(2) A copy of the document establishing the dedicated fund must be submitted to the department and placed in the facility's official files.

(3) If the balance of the dedicated fund exceeds the current cost estimate for closure at any time, the owner or operator may withdraw excess funds so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

c. Surety bond. A surety bond must be written by a company authorized by the commissioner of insurance to do business in the state, and the surety bond shall comply with the following:

(1) The bond shall be in a form approved by the commissioner of insurance and shall be payable to the department of natural resources.

(2) The bond shall be specific to a particular facility for the purpose of properly disposing of any solid waste, discarded CRTs, and materials derived from discarded CRTs associated with the collection and recycling of CRTs that may remain on site due to the owner's or operator's failure to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

(3) The owner or operator shall provide the department with a statement from the surety with each permit application renewal, noting that the bond is paid and current for the permit period for which the owner or operator has applied for renewal.

d. Letter of credit. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency.

(1) The owner or operator must submit to the department a copy of the letter of credit and place a copy in the facility's official files.

(2) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the name and address of the facility, and the amount of funds assured, must be included with the letter of credit submitted to the department and placed in the facility's files.

(3) The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the department 90 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the letter of credit into a secured trust fund that meets the requirements of paragraph 122.28(5)"a." If the owner or operator has not complied with this subrule within the 60-day time period, the issuer of the letter of credit shall deposit a sum equal to the amount of the letter of credit into the secured trust fund established by the owner or operator. The provision of funds by the issuer of the letter of credit shall be considered an issuance of a loan to the owner or operator, and the terms of that loan shall be governed by the letter of credit or subsequent agreement between those parties. The state shall not be considered a party to this credit transaction.

e. Corporate guarantee. An owner or operator may meet the requirements of this rule by obtaining a written guarantee. The guarantor must meet be the direct or higher-tier parent corporation of the owner or operator, an owner or operator whose parent corporation is also the parent corporation of the owner or operator, or an owner or operator with a "substantial business relationship'' with the owner or operator.

(1) The terms of the written guarantee must provide that within 30 days of the owner's or operator's failure to perform closure of a facility covered by the guarantee, the guarantor will:

1. Perform, or pay a third party to perform closure as required (performance guarantee);

2. Establish a fully funded secured trust fund as specified in paragraph 122.28(5)"a" in the name of the owner or operator (payment guarantee); or

3. Establish an alternative financial assurance instrument in the name of the owner or operator as required by this rule.

(2) The guarantor must satisfy one of the following three conditions:

1. A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard & Poor's or Aaa, Aa, A or Baa as issued by Moody's; or

2. A ratio of less than 1.5 comparing total liabilities to net worth; or

3. A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus $10 million, to total liabilities;

(3) The tangible net worth of the guarantor must be greater than the sum of the current closure cost estimate and any other environmental obligations, including other financial assurance guarantees.

(4) The guarantor must have assets amounting to at least the sum of current closure cost estimate and any other environmental obligations, including other financial assurance guarantees.

(5) Record-keeping and reporting requirements. The guarantor must submit the following records to the department and place a copy in the facility's official files:

1. A copy of the written guarantee between the owner or operator and the guarantor;

2. A letter signed by a certified public accountant and based upon a certified audit that:

• Lists all the current cost estimates covered by a guarantee including, but not limited to, cost estimates required by subrule 122.28(4); cost estimates required for municipal solid waste management facilities pursuant to 40 CFR Part 258; cost estimates required for UIC facilities under 40 CFR Part 144, if applicable; cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable; cost estimates required for PCB storage facilities under 40 CFR Part 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable; and

• Provides evidence demonstrating that the guarantor meets the conditions of subparagraphs 122.28(5)"e"(2), (3) and (4).

3. A copy of the independent certified public accountant's unqualified opinion of the guarantor's financial statements for the latest completed fiscal year. To be eligible to use the guarantee, the guarantor's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion or disclaimer of opinion shall be cause for disallowance of this instrument. A qualified opinion related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance. If the department does not allow use of the corporate guarantee, the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

f. Local government guarantee. An owner or operator may demonstrate financial assurance for closure by obtaining a written guarantee provided by a local government or jointly provided by the members of an agency established pursuant to Iowa Code chapter 28E.

(1) The terms of the written guarantee must provide that within 30 days of the owner's or operator's failure to perform closure of a facility covered by the guarantee, the guarantor will:

1. Perform, or pay a third party to perform closure as required (performance guarantee);

2. Establish a fully funded secured trust fund as specified in paragraph 122.28(5)"a" in the name of the owner or operator (payment guarantee); or

3. Establish an alternative financial assurance instrument in the name of the owner or operator as required by this rule.

(2) The guarantor must satisfy one of the following requirements:

1. If the guarantor has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, the guarantor must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard & Poor's on all such general obligation bonds; or

2. The guarantor must satisfy each of the following financial ratios based on the guarantor's most recent audited annual financial statement: a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05, and a ratio of annual debt service to total expenditures less than or equal to 0.20.

(3) The guarantor must prepare its financial statements in conformity with Generally Accepted Accounting Principles or Other Comprehensive Bases of Accounting and have its financial statements audited by an independent certified public accountant or the office of the auditor of the state of Iowa. The financial statement shall be in the form prescribed by the office of the auditor of the state of Iowa.

(4) A guarantor is not eligible to assure its obligations if it:

1. Is currently in default on any outstanding general obligation bonds; or

2. Has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard & Poor's; or

3. Operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or

4. Receives an adverse opinion or disclaimer of opinion from the independent certified public accountant or office of the auditor of the state of Iowa auditing its financial statement. A qualified opinion that is related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance of this mechanism.

5. The closure costs to be assured are greater than 43 percent of the guarantor's total annual revenue.

(5) The local government guarantor must include disclosure of the closure costs assured through the guarantee in its next annual audit report prior to the initial receipt of CRTs at the facility or prior to cancellation of an alternative financial assurance instrument, whichever is later. For the first year the guarantee is used to assure costs at a particular facility, the reference may instead be placed in the guarantor's official files until issuance of the next available annual audit report if timing does not permit the reference to be incorporated into the most recently issued annual audit report or budget. For closure costs, conformance with Governmental Accounting Standards Board Statement 18 ensures compliance with this public notice component.

(6) The local government owner or operator must submit to the department the following items:

1. A copy of the written guarantee between the owner or operator and the local government serving as guarantor for the closure costs at the facility.

2. A copy of the guarantor's most recent annual financial audit report indicating compliance with the financial ratios required by the second numbered paragraph of subparagraph 122.28(5)"f"(2), if applicable, and the requirements of subparagraphs 122.28(5)"f"(3) and (4).

3. A letter signed by the local government's chief financial officer that lists all the current cost estimates covered by the guarantor, as described in subrule 122.28(4); and provides evidence and certifies that the local government meets the conditions of subparagraphs 122.28(5)"f"(2), (3), (4) and (5).

122.28(6) Financial assurance cancellation and permit suspension.

a. A financial assurance instrument may be terminated by the owner or operator only if the owner or operator substitutes alternate financial assurance prior to cancellation, as specified in this rule or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

b. A financial assurance instrument shall be continuous in nature until canceled by the financial assurance provider or until the department gives written notification to the owner, operator, and financial assurance provider that the covered site has been properly closed. The financial assurance provider shall provide at least 90 days' notice in writing to the owner or operator and the department in the event of any intent to cancel the instrument.

c. Within 60 days of receipt of a written notice of cancellation of financial assurance by the financial assurance provider, the owner or operator must provide the department an alternative financial assurance instrument. If a means of continued financial assurance is not provided within that 60 days, the department shall suspend the permit.

d. The owner or operator shall perform proper closure within 30 days of the permit suspension. For the purpose of this rule, proper closure means completion of all items pursuant to rule 122.27(455B,455D) and subrule 122.28(4).

e. If the owner or operator does not properly close the site within the 30-day period allowed, the department shall file a claim with the financial assurance instrument provider to collect the amount of funds necessary to properly close the site.

f. An owner or operator who elects to terminate a permitted activity, or whose renewal application has been denied, or whose permit has been suspended or revoked for cause, must submit within 30 days of the termination of the permit a schedule for completing proper closure of the terminated activity. Closure completion cannot exceed 60 days from the date of termination of the permit.

g. The director may also request payment from any financial assurance provider to provide for the purpose of completing closure when the following circumstances exist:

(1) The owner or operator is more than 15 days late in providing a schedule for closure or for meeting any date in the schedule for closure.

(2) The owner or operator declares an economic inability to comply with this rule, either by sending written notification to the director or through an action such as, but not limited to, filing for bankruptcy.

ITEM 12. Amend 567—Chapter 123 by adopting the following **new** rule:

567—123.12(455B,455D,455F) Financial assurance requirements for regional collection centers and mobile unit collection and consolidation centers. Unless a facility is exempt from this rule pursuant to subrule 123.12(1), permitted RCCs and MUCCCs must obtain and submit a financial assurance instrument to the department for the storage of household hazardous materials in accordance with this rule. The financial assurance instrument shall provide monetary funds to properly dispose of household hazardous wastes, universal wastes, hazardous waste from Conditionally Exempt Small Quantity Generators, and any other solid wastes that may remain at a site due to the owner's or operator's failure to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

123.12(1) Exemptions. RCC and MUCCC facilities owned and operated in conjunction with a sanitary landfill already required to have financial assurance shall not be required to obtain additional financial assurance in compliance with this chapter.

123.12(2) No permit without financial assurance. A permit shall not be issued or renewed to the owner or operator of a RCC or MUCCC until a financial assurance instrument has been submitted to and approved by the department.

123.12(3) Proof of compliance. Proof of the establishment of the financial assurance instrument and compliance with this rule, including a current closure cost estimate, shall be submitted to the department by July 1, 2008, or at the time of application for a permit for a new RCC or MUCCC. The owner or operator must provide continuous coverage for closure and submit proof of compliance, including an updated closure cost estimate, with each permit renewal thereafter until released from this requirement by the department.

123.12(4) Use of one financial assurance instrument for multiple permitted activities. RCCs and MUCCCs required to maintain financial assurance pursuant to any other provisions of 567-Chapters 100 to 123 may satisfy the requirements of this rule by the use of one financial assurance instrument if the permit holder ensures that the instrument provides financial assurance for an amount at least equal to the current cost estimates for closure of all sanitary disposal project activities covered.

123.12(5) The estimate submitted to the department must account for at least the following factors determined by the department to be minimal necessary costs for closure pursuant to subrule 123.9(3):

a. The cost estimate submitted to the department shall be an average of the disposal costs charged by the hazardous waste contractor to the RCC or MUCCC as reported on the semiannual reports submitted in accordance with rule 123.11(455B,455D,455F) for the most recent three–year period.

b. For new facilities or existing facilities that do not have sufficient data to determine an average disposal cost, the initial cost estimate shall be equal to $15,000. The estimate shall be adjusted once sufficient data is available for a three–year period.

123.12(6) Acceptable financial assurance instruments. The financial assurance instrument shall be established in an amount equal to the cost estimate prepared in accordance with subrule 123.12(5), and shall not be canceled, revoked, disbursed, released, or allowed to terminate without the approval of the department. Financial assurance may be

provided by cash in the form of a secured trust fund or local government dedicated fund, surety bond, letter of credit, or corporate or local government guarantee, as follows:

a. Secured trust fund. The owner or operator of a RCC or MUCCC or an entity serving as a guarantor may demonstrate financial assurance for closure by establishing a secured trust fund that conforms to the requirements of this paragraph.

(1) The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. The fund shall be restricted for the sole purpose of funding closure activities at the facility and a copy of the trust agreement must be submitted to the department and placed in the facility's official files.

(2) A secured trust fund shall name the department of natural resources as the entity authorized to draw funds from the trust, subject to proper notification to the trust officer of failure by the permittee to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

(3) Money in the fund shall not be assigned for the benefit of creditors with the exception of the state.

(4) Money in the fund shall not be used to pay any final judgment against a permit holder arising out of the ownership or operation of the site during its active life or after closure.

(5) The owner or operator, or other person authorized to conduct closure activities may request reimbursement from the trustee for closure expenditures as they are incurred. Requests for reimbursement shall be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure and if documentation of the justification for reimbursement has been submitted to the department for prior approval.

(6) If the balance of the trust fund exceeds the current cost estimate for closure at any time, the owner or operator may request withdrawal of the excess funds from the trustee so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

b. Local government dedicated fund. The owner or operator of a publicly owned RCC or MUCCC or local government serving as a guarantor may demonstrate financial assurance for closure by establishing a dedicated fund that conforms to the requirements of this paragraph.

(1) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, resolution or order as a restricted fund to pay for closure costs arising from the operation of the facility.

(2) A copy of the document establishing the dedicated fund must be submitted to the department and placed in the facility's official files.

(3) If the balance of the dedicated fund exceeds the current cost estimate for closure at any time, the owner or operator may withdraw excess funds so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

c. Surety bond. A surety bond must be written by a company authorized by the commissioner of insurance to do business in the state, and the surety bond shall comply with the following:

(1) The bond shall be in a form approved by the commissioner of insurance and shall be payable to the department of natural resources.

(2) The bond shall be specific to a particular facility for the purpose of properly disposing of any household hazardous wastes that may remain on site due to the owner's or operator's failure to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

(3) The owner or operator shall provide the department with a statement from the surety with each permit application renewal, noting that the bond is paid and current for the permit period for which the owner or operator has applied for renewal.

d. Letter of credit. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency.

(1) The owner or operator must submit to the department a copy of the letter of credit and place a copy in the facility's official files.

(2) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the name and address of the facility, and the amount of funds assured, must be included with the letter of credit submitted to the department and placed in the facility's files.

(3) The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the department 90 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the letter of credit into a secured trust fund that meets the requirements of paragraph 123.12(6)"a." If the owner or operator has not complied with this subrule within the 60-day time period, the issuer of the letter of credit shall deposit a sum equal to the amount of the letter of credit into the secured trust fund established by the owner or operator. The provision of funds by the issuer of the letter of credit shall be considered an issuance of a loan to the owner or operator, and the terms of that loan shall be governed by the letter of credit or subsequent agreement between those parties. The state shall not be considered a party to this credit transaction.

e. Corporate guarantee. An owner or operator may meet the requirements of this rule by obtaining a written guarantee. The guarantor must meet be the direct or higher-tier parent corporation of the owner or operator, an owner or operator whose parent corporation is also the parent corporation of the owner or operator, or an owner or operator with a "substantial business relationship'' with the owner or operator.

(1) The terms of the written guarantee must provide that within 30 days of the owner's or operator's failure to perform closure of a facility covered by the guarantee, the guarantor will:

1. Perform, or pay a third party to perform closure as required (performance guarantee);

2. Establish a fully funded secured trust fund as specified in paragraph 123.12(6)“a” in the name of the owner or operator (payment guarantee); or

3. Establish an alternative financial assurance instrument in the name of the owner or operator as required by this rule.

(2) The guarantor must satisfy one of the following three conditions:

1. A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard & Poor’s or Aaa, Aa, A or Baa as issued by Moody’s; or

2. A ratio of less than 1.5 comparing total liabilities to net worth; or

3. A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus $10 million, to total liabilities;

(3) The tangible net worth of the guarantor must be greater than the sum of the current closure cost estimate and any other environmental obligations, including other financial assurance guarantees.

(4) The guarantor must have assets amounting to at least the sum of current closure cost estimate and any other environmental obligations, including other financial assurance guarantees.

(5) Record-keeping and reporting requirements. The guarantor must submit the following records to the department and place a copy in the facility’s official files:

1. A copy of the written guarantee between the owner or operator and the guarantor;

2. A letter signed by a certified public accountant and based upon a certified audit that:

- Lists all the current cost estimates covered by a guarantee including, but not limited to, cost estimates required by subrule 123.12(5); cost estimates required for municipal solid waste management facilities pursuant to 40 CFR Part 258; cost estimates required for UIC facilities under 40 CFR Part 144, if applicable; cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable; cost estimates required for PCB storage facilities under 40 CFR Part 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable; and
- Provides evidence demonstrating that the guarantor meets the conditions of subparagraphs 123.12(6)“e”(2), (3) and (4).

3. A copy of the independent certified public accountant’s unqualified opinion of the guarantor’s financial statements for the latest completed fiscal year. To be eligible to use the guarantee, the guarantor’s financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion or disclaimer of opinion shall be cause for disallowance of this instrument. A qualified opinion related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance. If the department does not allow use of the corporate guarantee, the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

f. Local government guarantee. An owner or operator may demonstrate financial assurance for closure by obtaining a written guarantee provided by a local government or jointly provided by the members of an agency established pursuant to Iowa Code chapter 28E.

(1) The terms of the written guarantee must provide that within 30 days of the owner's or operator's failure to perform closure of a facility covered by the guarantee, the guarantor will:

1. Perform, or pay a third party to perform closure as required (performance guarantee);

2. Establish a fully funded secured trust fund as specified in paragraph 123.12(6)"a" in the name of the owner or operator (payment guarantee); or

3. Establish an alternative financial assurance instrument in the name of the owner or operator as required by this rule.

(2) The guarantor must satisfy one of the following requirements:

1. If the guarantor has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, the guarantor must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard & Poor's on all such general obligation bonds; or

2. The guarantor must satisfy each of the following financial ratios based on the guarantor's most recent audited annual financial statement: a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05, and a ratio of annual debt service to total expenditures less than or equal to 0.20.

(3) The guarantor must prepare its financial statements in conformity with Generally Accepted Accounting Principles or Other Comprehensive Bases of Accounting and have its financial statements audited by an independent certified public accountant or the office of the auditor of the state of Iowa. The financial statement shall be in the form prescribed by the office of the auditor of the state of Iowa.

(4) A guarantor is not eligible to assure its obligations if it:

1. Is currently in default on any outstanding general obligation bonds; or

2. Has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard & Poor's; or

3. Operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or

4. Receives an adverse opinion or disclaimer of opinion from the independent certified public accountant or office of the auditor of the state of Iowa auditing its financial statement. A qualified opinion that is related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance of this mechanism.

5. The closure costs to be assured are greater than 43 percent of the guarantor's total annual revenue.

(5) The local government guarantor must include disclosure of the closure costs assured through the guarantee in its next annual audit report prior to the initial receipt of household hazardous wastes at the facility or prior to cancellation of an alternative financial assurance instrument, whichever is later. For the first year the guarantee is used to assure

costs at a particular facility, the reference may instead be placed in the guarantor's official files until issuance of the next available annual audit report if timing does not permit the reference to be incorporated into the most recently issued annual audit report or budget. For closure costs, conformance with Governmental Accounting Standards Board Statement 18 ensures compliance with this public notice component.

(6) The local government owner or operator must submit to the department the following items:

1. A copy of the written guarantee between the owner or operator and the local government serving as guarantor for the closure costs at the facility.

2. A copy of the guarantor's most recent annual financial audit report indicating compliance with the financial ratios required by the second numbered paragraph of subparagraph 123.12(6)"f"(2), if applicable, and the requirements of subparagraphs 123.12(6)"f"(3) and (4).

3. A letter signed by the local government's chief financial officer that lists all the current cost estimates covered by the guarantor, as described in subrule 123.12(5); and provides evidence and certifies that the local government meets the conditions of subparagraphs 123.12(6)"f"(2), (3), (4) and (5).

122.12(7) Financial assurance cancellation and permit suspension.

a. A financial assurance instrument may be terminated by the owner or operator only if the owner or operator substitutes alternate financial assurance prior to cancellation, as specified in this rule or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

b. A financial assurance instrument shall be continuous in nature until canceled by the financial assurance provider or until the department gives written notification to the owner, operator, and financial assurance provider that the covered site has been properly closed. The financial assurance provider shall provide at least 90 days' notice in writing to the owner or operator and the department in the event of any intent to cancel the instrument.

c. Within 60 days of receipt of a written notice of cancellation of financial assurance by the financial assurance provider, the owner or operator must provide the department an alternative financial assurance instrument. If a means of continued financial assurance is not provided within that 60 days, the department shall suspend the permit.

d. The owner or operator shall perform proper closure within 30 days of the permit suspension. For the purpose of this rule, proper closure means completion of all items pursuant to subrule 123.9(3).

e. If the owner or operator does not properly close the site within the 30-day period allowed, the department shall file a claim with the financial assurance instrument provider to collect the amount of funds necessary to properly close the site.

f. An owner or operator who elects to terminate a permitted activity, or whose renewal application has been denied, or whose permit has been suspended or revoked for cause, must submit within 30 days of the termination of the permit a schedule for completing proper closure of the terminated activity. Closure completion cannot exceed 60 days from the date of termination of the permit.

g. The director may also request payment from any financial assurance provider to provide for the purpose of completing closure when the following circumstances exist:

(1) The owner or operator is more than 15 days late in providing a schedule for closure or for meeting any date in the schedule for closure.

(2) The owner or operator declares an economic inability to comply with this rule, either by sending written notification to the director or through an action such as, but not limited to, filing for bankruptcy.